



*To enrich lives through effective and caring service*



**Stan Wisniewski**  
Director

**Kerry Silverstrom**  
Chief Deputy

March 6, 2008

TO: Small Craft Harbor Commission

FROM: Stan Wisniewski, Director *Stan Wisniewski*

SUBJECT: **COMMISSION AGENDA** – March 12, 2008 Meeting

Enclosed is the Agenda for the March 12, 2008 meeting. Also enclosed are the minutes for your Commission's February 13, 2008 meeting, as well as the reports related to Agenda Items 3a, 3b, 4a, 4b, 5, and 6.

Please feel free to call me at (310) 305-9522 if you have any questions or need additional information.

SW:ks

Enclosures



*To enrich lives through effective and caring service*



**Stan Wisniewski**  
Director

**Kerry Silverstrom**  
Chief Deputy

## SMALL CRAFT HARBOR COMMISSION

### AGENDA

**March 12, 2008**  
**9:30 a.m.**

**BURTON W. CHACE PARK COMMUNITY ROOM**  
**13650 MINDANAO WAY**  
**MARINA DEL REY, CA. 90292**

1. Call to Order and Pledge of Allegiance
2. Approval of Minutes: February 13, 2008 Meeting
3. **REGULAR REPORTS**
  - a. Marina Sheriff (DISCUSS REPORTS)
    - Crime Statistics
    - Enforcement of Seaworthy & Liveaboard Sections of the Harbor Ordinance
  - b. Marina del Rey and Beach Special Events (PRESENTATION BY DUSTY CRANE, DIVISION CHIEF, COMMUNITY AND MARKETING SERVICES)
4. **OLD BUSINESS**
  - a. Viewing of Remaining Video Presentation Regarding January 2008 Coastal Commission Meeting (PRESENTATION BY JOHN NAHHAS)
  - b. Parcel 21 (Holiday Harbor) - Approval of Option for Amended and Restated Lease to Facilitate Redevelopment (RECOMMEND TO BOARD OF SUPERVISORS)
5. **NEW BUSINESS**

Regional Planning Report on Coastal Commission's Periodic Review of the Marina del Rey LCP (PRESENTATION BY RON HOFFMAN AND GINA NATOLI, DEPARTMENT OF REGIONAL PLANNING)

6. **STAFF REPORTS**

Ongoing Activities

(DISCUSS REPORT)

- Board Actions on Items Relating to Marina del Rey
- Regional Planning Commission's Calendar
- Change in Small Craft Harbor Commission Calendar
- Minimum Requirements for Liveaboard Status
- Brown Act & SCHC Rules
- New Sublease at Parcel 33R
- Design Control Board Minutes

(DISCUSSION BY  
COUNTY COUNSEL)

7. **COMMUNICATION FROM THE PUBLIC**

8. **ADJOURNMENT**

**PLEASE NOTE:**

1. The Los Angeles County Board of Supervisors adopted Chapter 2.160 of the Los Angeles Code (Ord. 93-0031 § 2 (part), 1993), relating to lobbyists. Any person who seeks support or endorsement from the Small Craft Harbor Commission on any official action must certify that he/she is familiar with the requirements of this ordinance. A copy of the ordinance can be provided prior to the meeting and certification is to be made before or at the meeting.
2. The agenda will be posted on the Internet and displayed at the following locations at least 72 hours preceding the meeting date:

Department of Beaches and Harbors' Website Address: <http://marinadelrey.lacounty.gov>

Department of Beaches and Harbors  
Administration Building  
13837 Fiji Way  
Marina del Rey, CA 90292

MdR Visitors & Information Center  
4701 Admiralty Way  
Marina del Rey, CA 90292

Burton Chace Park Community Room  
13650 Mindanao Way  
Marina del Rey, CA 90292

Lloyd Taber-Marina del Rey Library  
4533 Admiralty Way  
Marina del Rey, CA 90292

Si necesita asistencia para interpretar esta informacion llame al (310) 305-9547.

**ADA ACCOMMODATIONS:** If you require reasonable accommodations or auxiliary aids and services such as material in alternate format or a sign language interpreter, please contact the ADA (Americans with Disabilities Act) Coordinator at (310) 305-9590 (Voice) or (310) 821-1734 (TDD).

**SMALL CRAFT HARBOR COMMISSION  
MINUTES  
February 13, 2008**

Commissioners Present

Russ Lesser, Chairman; Vanessa Delgado, MPA, Vice-Chairman, Albert Landini, Ed.D

Commissioners Absent

Christopher Chuang-Lin, PhD

Department of Beaches and Harbors

Stan Wisniewski, Director; Santos H. Kreimann, Deputy Director

County Staff

Jeffrey A. Heintz, Outside Counsel; Beverly Moore, MdR Convention and Visitors Bureau; Lt. Kusch and Deputy John Rochford from the Sheriff's Department

**CALL TO ORDER, ACTION ON ABSENCES AND PLEDGE OF ALLEGIANCE**

Chairman Lesser called the meeting to order at 9:51 a.m. The Commissioners, staff and members of the public stood and recited the Pledge of Allegiance.

Chairman Lesser spoke about his background in public service, and announced changes in the protocol on how the Small Craft Harbor Commission meetings will be conducted.

**APPROVAL OF MINUTES**

Chairman Lesser opened the floor to public comments.

**A motion was made by Vice Chair Delgado and Seconded by Commissioner Landini to approve the January 2008 minutes. This motion was unanimously approved.**

**REGULAR REPORTS**

**ITEM 3a: Marina Sheriff – Crime Statistics**

Lt. Kusch called to the attention of the public a rape report, a boat theft, and the commissioning of a new Sheriff patrol boat.

Deputy Rochford stated his report represents an accurate count of liveaboards. The Sheriff's Department is verifying its liveaboards statistics with the Marina dockmasters to ensure accurate data.

Mr. John Nahhas asked what criteria is used to evaluate a liveaboard tenant.

Chairman Lesser asked the Department for a short report about what is required for a legal liveaboard, and what fees are associated with a legal liveaboard.

Chairman Lesser called up

**Item 6a, 'Foundation Allegation Regarding Parcel 12 (Esprit I)'.**

Mr. Eric Wickland, from the Department of Public Works, Building and Safety, was present to give his report. Mr. Wickland stated he had been inspecting Esprit I for the last one and a half years. During the course of inspecting the project, Mr. Wickland had not seen any evidence the project was sinking. Furthermore, Mr. Wickland stated since the waterproof membrane was installed, he had not observed any water intrusion into the project.

Ms. Carla Andrus asked to see a copy of the state code, commented the code is being applied liberally, and spoke about the prior inspector.

Mr. Don Klien spoke about confidentiality and the length of time of construction for this project.

Mr. Nahhas commented about buildings on docks, pylons, and the community planning process.

Mr. Wickland stated the public may not tour the construction site, as it is a hard hat area. In addition, the plans and related documents are proprietary information.

Mr. John Davis spoke about water discharge and the foundation subsidence of the Esprit I project.

Mr. Steve Cordova asked if anyone in the room or the inspector saw any water intrusion on the project. No one responded affirmatively, and Mr. Cordova then stated the allegations regarding Esprit I are rumors.

Ms. Nancy Vernon Marino commented on Mr. Wickland's presentation.

Chairman Lesser stopped Ms. Marino's time, and asked Mr. Wickland if all the inspections had been done, and if the building is properly built to this point. Mr. Wickland answered "that is correct". Chairman Lesser reiterated Mr. Wickland is the building inspector representing the Department of Public Works.

Ms. Marino asked Mr. Wickland if the project was approved with below sea level construction, and asked if surveys have been conducted since the framing was done to ascertain height above sea level.

Mr. Wickland responded the inspection process is very rigorous, there are ongoing tests, and the building is being built according to the approved plans. In addition, there is no subsidence of the buildings.

**ITEM 3b: Marina del Rey and Beach Special Events**

Dusty Crane reported that Fisherman's Village is continuing their weekend concerts, and Hermosa Beach will have its 56<sup>th</sup> Annual Sand and Strand Race.

**ITEM 3c: Marina del Rey Convention and Visitors Bureau**

Director Beverly Moore explained the Bureau's efforts to encourage the travel media to write stories about Marina del Rey. In addition, new writers were introduced to Marina to encourage additional articles about Marina del Rey.

Chairman Lesser opened the floor to public comments.

Mr. Nahhas asked that his fifteen minute video be shown at this point. Chairman Lesser agreed.

Ms. Marino commented on Pier 1 leaving the area.

**ITEM 5b: 15 Minute Video Presentation Regarding January 2008 Coastal Commission Meeting**

Due to technical difficulties, the computer video file was not viewed in its entirety.

**4. Old Business**

**ITEM 4a: Approval of Amendment No. 12 to Lease No. 6684 to Modify Redevelopment Work and Leasehold Area – Parcel 20 (Panay Way Marina)**

Chairman Lesser described the new process of presenting a project to the Small Craft Harbor Commission:

1. Staff will provide a report
2. Proponents will speak
3. Opponents will speak next
4. Proponents will then have the opportunity to rebut

Mr. Kreimann provided a description of the proposed project.

Chairman Lesser opened the floor to proponents:

Mr. Sherman Gardner, representing Goldrich and Kest Industries, commented that he has worked diligently with the Department of Beaches and Harbors in following their procedures, and supports the project.

Mr. Steve Cordova, Staff Commodore, Pacific Mariners Yacht Club, stated he is satisfied with the work Goldrich and Kest is doing in the community, and supports the project.

Mr. Davis insisted on speaking out of order and Chairman Lesser called for the Sheriff to maintain order.

Mr. Larry Koch voiced his support for this project.

Chairman Lesser opened the floor to opponents:

Mr. Davis stated he opposes this project because it would contradict the findings made by the California Coastal Commission regarding amendments and reduction of boat slips.

Ms. Marino stated her opposition to this project, the need for a comprehensive look at all projects, and a master EIR.

Ms. Andrus voiced her opposition to this project.

Mr. David Barish voiced his opposition to this project, due to the congestion that would be created during construction.

Mr. Dan Gottlieb stated his opposition to the project, and the confusion of parcel descriptions.

Mr. David Delange, Executive Director for Coalition to Save the Marina, opposes the relocation of the administration building.

Ms. Ina Barish commented the DCB stated it was inappropriate to place the Administrative Building on prime real estate overlooking the water, and is opposed to this project.

Mr. Wisniewski commented this transaction is being looked at from a proprietary standpoint, and the regulatory implications are not being considered now. The California Coastal Commission's periodic review recommendations are being prepared by the Coastal Commission staff. Once the recommendations are adopted, they will be provided to the County. Then, the Department of Regional Planning will hold public hearings in Marina del Rey, and make recommendations to the Regional Planning Commission and the Board of Supervisors on how to respond to the Coastal Commission.

Chairman Lessor opened the floor to proponents:

Mr. Frank Hickman from Goldrich and Kest, offered to hold public meetings to share ongoing progress on a monthly basis.

Vice Chair Delgado asked for clarification of Capri approval for this project.

Mr. Kreimann explained this would allow the construction of a yacht club to be transferred to Parcel 21.

Commissioner Landini commented the proponents should have had a site plan and a map of the surrounding area. In addition, the Commission is charged with looking at the adequacy of the financial aspect of the transaction.

**Vice Chairman Delgado made a motion to approve, Seconded by Commissioner Landini. The motion was unanimously approved.**

**ITEM 4b: Parcel 21 (Holiday Harbor) - Approval of Option for Amended and Restated Lease to Facilitate Redevelopment**

Chairman Lessor stated, in the spirit of complete openness, he met with the applicant for 35 minutes to discuss the project. Chairman Lesser told the applicant the plan submitted at the last meeting was unacceptable, and the applicant should have a modified plan for the next meeting.

Mr. Kreimann provided a description of the proposed project.

Chairman Lesser opened the floor to proponents:

Mr. Sherman Gardner, representing the applicant, stated the revised plan eliminated any slips over 35 feet, based on concerns raised by the boaters.

The marine engineer for the project spoke about ADA slips and reconfiguring slips for the project.

Commissioner Landini asked how many final slips are on the chart. The marine engineer responded 103. Commissioner Landini then asked how many slips were available prior to the chart. The answer given was 148.

Chairman Lesser asked how many boats are in the marina.

Mr. Gardner replied due to liability issues, there is one boat allowed in a double slip.

The marine engineer accounted for some of the slip losses due to ADA rules, space for the water taxi and pump-out station, and the design of wider slips for power boats due to DBAW standards.

Chairman Lesser asked County Counsel about ADA standards prior to the meeting, and read the following response to be included in the record:

When Mr. Nahhas says there is no ADA standards, he is right to the extent the U.S. Department of Justice has been working on dock standards for ADA compliance for sometime, but they have not been approved. That does not mean that new facilities does not have to comply with ADA. It's just that no uniform standards have been promulgated So, local jurisdictions are left to impose their own requirements. The County building code contains ADA compliant access standards and that is what the lessees has to comply with when reconstructing the docks in order to obtain their building permits. ADA compliance is not optional, as Mr. Nahhas implies. It is a requirement of the building code.

Commissioner Landini asked about the financial aspect, and Mr. Wisniewski replied the Board Letter gives a summary of the terms.

Commissioner Lesser stated he had a copy of a settlement agreement between the applicant's organization and the Coalition to Save the Marina, whereby in exchange for a sum of money, the Coalition to Save the Marina would not oppose the development on Parcels 20, 21 and OT.

Mr. Gardner responded that it was in the best interest of the project to avoid further delays by settling the lawsuit.

Chairman Lesser opened the floor to opponents:

Mr. Davis stated County Counsel gave fraudulent advice to the Commission regarding the Brown Act, and this project is not in conformance with U.S. public law 780.

Mr. Jerry Redman commented on the count of boats in double slips, and the need for an actual count of boats.

Ms. Andrus voiced her opposition to this project and missing slips.

Ms. Marino commented the project would need an LCP amendment, removal of parking lots, and opposition to the project.



Chairman Lesser commented that approval of a project by the SCHC symbolizes a tacit approval of the development, however, the project does not go forward if approvals from other agencies are not obtained.

Mr. Bill Vreszk stated there is collateral damage whenever something is built.

Mr. Dan Gottlieb commented on the names of the parcels.

Mr. Barish commented on the number of boats in the double slips on Parcel 21, and the number of parking spaces.

Mr. Nahhas, while showing photos through a projector, spoke about slip sizes, slip reductions, pump-out stations, affordable boating and double wide slips.

Chairman Lesser responded that valid points had been raised, and this project should be carried over to the next meeting so the following questions can be answered;

1. How many boats are in the slips?
2. When the slips are torn up during construction, what plan will be instituted to accommodate the existing tenants?
3. How many additional slips can be added by narrowing the slips for sailboats?

Mr. Gardner stated the marina has outlived its useful life, and reduced the slip sizes to accommodate the boaters.

Mr. Wisniewski stated the Department does not support double slips anymore, and the applicant has made reasonable accommodations in this project.

**Chairman Lesser made a motion to carry the item over to thirty days, Seconded by Commissioner Landini. The motion was unanimously approved.**

**ITEM 5a:** Parcel 47 (Santa Monica Windjammers Yacht Club) - Approval of Lease Agreement

Mr. Kreimann provided a description of the proposed project.

Chairman Lesser opened the floor to proponents:

Mr. Davis stated his approval for this item, and discussed the Brown Act.

Ms. Marino stated her approval for this item.

Mr. Cordova stated his approval for this item.

Mr. Nahhas stated his approval for this item.

Mr. Koch stated his approval for this item.

Chairman Lesser opened the floor to opponents:

No one spoke in opposition.

Commissioner Landini asked about the financial aspect of this item.

Mr. Wisniewski explained the economic consultant will prepare a memorandum addressing the economic points of this deal.

**Vice Chair Delgado made a motion to approve, with the stipulation that a memorandum by the economic consultant be attached. Seconded by Commissioner Landini. The motion was unanimously approved.**

**ITEM 6a:** Ongoing reports.

Chairman Lesser opened the floor to public comments:

Mr. Davis spoke about the LCP, and minimum rent payments of Parcels 12 and 15.

Mr. Barish spoke on Esprit II being in material breach due to the delay in the start of construction.

Ms. Marino spoke on the LCP periodic review and the Regional Planning calendar.

Mr. Nahhas spoke about the County's equipment.

Mr. Davis commented on County Counsel, market rates and rent control.

Ms. Marino spoke about ex parte disclosure and Chairman Lesser's qualifications.

Mr. Delange spoke about the definition of 'findings' and 'recommendation', and the authority of the Small Craft Harbor Commission.

Ms. Andrus asked about the elimination of dock 3700 on Parcel 21,

Mr. Nahhas spoke on community interaction and follow up.

Patricia Ray spoke about her civil rights.

### **ADJOURNMENT**

Chairman Lesser adjourned the meeting at 1:18 p.m.

Respectfully submitted by:

R. L. Frisch  
on behalf of the Commission Secretary

# LOS ANGELES COUNTY SHERIFF'S DEPARTMENT

## MARINA DEL REY STATION

### PART I CRIMES- FEBRUARY 2008



Community Advisory Committee	Upper Ladera 2764	Lower Ladera 2766
Homicide	0	0
Rape	0	0
Robbery: Weapon	0	2
Robbery: Strong-Arm	0	0
Aggravated Assault	0	1
Burglary: Residence	1	3
Burglary: Other Structure	0	2
Grand Theft	1	2
Grand Theft Auto	0	0
Arson	0	0
Boat Theft	0	0
Vehicle Burglary	1	3
Boat Burglary	0	0
Petty Theft	0	1
<b>Total</b>	<b>3</b>	<b>14</b>

**Note-** The above numbers may change due to late reports and adjustments to previously reported crimes.

**Source-** LARCIS, **Date Prepared** MARCH 3, 2008  
**CRIME INFORMATION REPORT - OPTION B**

# LOS ANGELES COUNTY SHERIFF'S DEPARTMENT

## MARINA DEL REY STATION

### PART I CRIMES-FEBRUARY 2008



Part I Crimes	MARINA AREA	EAST END
	(RD'S 2760-2763)	(RD'S 2764-2768)
Homicide	0	0
Rape	0	0
Robbery: Weapon	0	2
Robbery: Strong-Arm	1	1
Aggravated Assault	1	5
Burglary: Residence	1	7
Burglary: Other Structure	3	5
Grand Theft	3	8
Grand Theft Auto	1	3
Arson	0	0
Boat Theft	0	0
Vehicle Burglary	8	12
Boat Burglary	3	0
Petty Theft	6	2
Total	27	45

**Note-** The above numbers may change due to late reports and adjustments to previously reported crimes.

**Source-** LARCIS, **Date Prepared -**MARCH 3, 2008  
CRIME INFORMATION REPORT - OPTION B



**LOS ANGELES COUNTY SHERIFF'S DEPARTMENT  
MARINA DEL REY STATION  
PART I CRIMES-FEBRUARY 2008**



	West Marina 2760	East Marina 2761	Lost R.D. 2762	Marina Water 2763	Upper Ladera 2764	County Area 2765	Lower Ladera 2766	Windsor Hills 2767	View Park 2768	TOTALS
Homicide										0
Rape										0
Robbery: Weapon							2			2
Robbery: Strong-Arm		1						1		2
Aggravated Assault	1						1	1	3	6
Burglary: Residence	1				1		3	1	3	8
Burglary: Other Structure	2	1					2	1	2	8
Grand Theft	2	1			1		2	4	1	11
Grand Theft Auto	1							3		4
Arson										0
Boat Theft										0
Vehicle Burglary	7	1			1		3	4	4	20
Boat Burglary	1			2						3
Petty Theft	1	5					1	1		8
REPORTING DISTRICTS										
TOTALS	16	9	0	2	3	0	14	16	12	72

Note- The above numbers may change due to late reports and adjustments to previously reported crimes.

Source- LARCIS, Date Prepared -MARCH 3, 2008  
CRIME INFORMATION REPORT - OPTION B

# MARINA DEL REY HARBOR ORDINANCE SEAWORTHY & LIVEBOARD COMPLIANCE REPORT 2008

	January	February
Liveboard Permits Issued (NEW)	1	2
(RENEW)	<u>5</u>	<u>4</u>
<b>Total</b>	<b>6</b>	<b>6</b>
Notices to Comply Issued	0	7

<u>Totals</u>	<u>Last Meeting</u>	<u>Present</u>
Liveboards:	344	343
Current Permits:	112	106
Expired Permits:	93	104

Total reported vessels docked in Marina del Rey Harbor: 4,690

Percentage of vessels that are registered liveboards: 7.3%

No new citations were issued for violations of 19.12.1110 L.A.C.C. (liveboard permit) or 19.12.1060 L.A.C.C. (un-seaworthy vessel) in the months of July and August.

## Number Of Impounded Vessels Demolished

To date, two hundred thirty-six (238) vessels have been removed from the marina for disposal, three (5) of those in 2008. Currently, three (1) vessels are awaiting disposal.



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March 6, 2008

**Stan Wisniewski**  
Director

**Kerry Silverstrom**  
Chief Deputy

TO: Small Craft Harbor Commission

FROM: Stan Wisniewski, Director

SUBJECT: **AGENDA ITEM 3b- MARINA DEL REY AND BEACH SPECIAL EVENTS**

**MARINA DEL REY EVENTS**

**OPENING DAY CEREMONIES 2008**

Marina del Rey Yacht Clubs  
Saturday, March 15 – Sunday, March 16

The yacht clubs of Marina del Rey will be celebrating the opening of the yachting season on March 15 and 16. Contact the clubs for their schedule of events during this weekend.

*California Yacht Club:*  
[www.calyachtclub.com](http://www.calyachtclub.com)  
(310) 823-4567

*Pacific Mariners Yacht Club:*  
[www.pmyc.org](http://www.pmyc.org)  
(310) 823-9717

*Del Rey Yacht Club:*  
[www.dryc.org](http://www.dryc.org)  
(310) 823-4664

*Santa Monica Windjammers Yacht Club:*  
[www.smwyc.org](http://www.smwyc.org)  
(310) 827-7692

*Marina Venice Yacht Club:*  
[www.mvyc.org](http://www.mvyc.org)  
(310) 822-9082

*South Coast Corinthian Yacht Club:*  
[www.sccyc.org](http://www.sccyc.org)  
(310) 306-2787

**MARINA DEL REY OUTDOOR ADVENTURES 2008**

Sponsored by the Los Angeles County Department of Beaches and Harbors  
Burton Chace Park ♦ 13650 Mindanao Way ♦ Marina del Rey ♦ Ca ♦ 90292

**Bird Watching Experience Program**

Thursdays, March 27 and May 15 at 4:00 pm  
&

Thursdays, April 24 and June 26 at 9:00 am

County-sponsored bird watching walk for adults is a free two-hour walk, which will take place at various sites in the Ballona Wetlands. Meet at the Burton Chace Park, Community Room. Participation, parking and transportation to the tour site is free. Pre-registration is a must! To register, please call (310) 628-2135.

**Harbor Kayaking Program**

Saturdays

March 29, April 26, May 17, June 28, September 27, October 25 and November 22  
11:30 am – 1:45 pm

Come and take a kayaking lesson in the Marina del Rey harbor. This two-hour session begins with Los Angeles County Lifeguard kayak and water safety instruction. The group will then have the opportunity to enjoy Marina del Rey's basins. This is a great opportunity for families to have a fun and educational day in Marina del Rey.

Program requires pre-registration. Fees are currently \$25 (youths 10–18) and \$30 (19 or older), but may increase. Fees must be paid upon registering.

**Surf Kayaking Program**

Saturdays

March 29, April 26, May 17, June 28, September 27, October 25 and November 22  
8:00 – 11:00 am

Los Angeles County Department of Beaches and Harbors is offering a Surf Kayaking program. Participants will get the opportunity to kayak through the Marina del Rey harbor and head out to the North Jetty, where they will surf the waves aboard sit-on-top kayaks. Los Angeles County Ocean Lifeguards will instruct the outing.

Program requires pre-registration. Fees are currently \$25 (youths 10–18) and \$30 (19 or older), but may increase. Fees must be paid upon registering.

**For all Outdoor Adventure Programs call:** Burton Chace Park at (310) 305-9587.

**FISHERMAN'S VILLAGE WEEKEND CONCERTS**

Sponsored by Pacific Ocean Management, LLC

All concerts are from 1:00 – 4:00 pm

**Saturday, March 8**

Blue Breeze, playing Smooth Jazz

**Sunday, March 9**

2 AZZ 1 Body & Soul Band, playing Smooth Jazz

**Saturday, March 15**

Kid & Nic Show, playing American Pop

**Sunday, March 16**

Elliott Cane Quintet Jazz, playing Latin Jazz

**Saturday, March 22**

Upstream, playing Reggae & Caribbean Roots

**Sunday, March 23**

LA CAT, playing Reggae



**Saturday, March 29**

Swing Syndicate, playing Swing Standards

**Sunday, March 30**

Crown City Bombers, playing Rock & Roll Blues

For more information call: Pacific Ocean Management at (310) 822-6866.

**BEACH EVENTS**

**Beach Boom Boomerang Tournament (New)**

City of Hermosa Beach  
Saturday, March 22, 2008

This is a new, one-day, event for the City. The United States Boomerang Association produces the tournament that uses two or three throwing circles drawn in the sand. The tournaments are open to the public and observers are encouraged to try their hand at throwing and catching a returning boomerang. For more information: Call (310) 318-0280.

**Triple Crown Showdown Surf Contest (New)**

City of Hermosa Beach  
Saturday, April 5, 2008

This is a new, one-day, event for the City. Surf and boogie board contests will take place south of the Pier and include all levels and ages. For more information: Call (310) 318-0280.

SW:DC:ks



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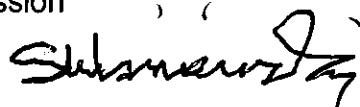


March 6, 2008

**Stan Wisniewski**  
Director

**Kerry Silverstrom**  
Chief Deputy

TO: Small Craft Harbor Commission

FROM: Stan Wisniewski, Director 

SUBJECT: **AGENDA ITEM 4a – VIEWING OF REMAINING VIDEO  
PRESENTATION REGARDING JANUARY 2008 COASTAL  
COMMISSION MEETING**

At your February 13, 2008 Small Craft Harbor Commission (SCHC) meeting, a video showing comments made by members of the California Coastal Commission (CCC) on the Marina del Rey Local Coastal Program periodic review was presented by Mr. John Nahhas. Unfortunately, the video was not viewed in its entirety due to some technical difficulties with the file. As a result, your Commission agreed to provide Mr. Nahhas additional time to present the remainder of his video at this month's meeting.

In order to ensure the video can be viewed without disruption, we contacted Mr. Nahhas via e-mail to request that he provide staff with a DVD copy of the video so that we can preload it onto the County's laptop and test it for compatibility. At the time of the mailing of the SCHC meeting package this evening, however, Mr. Nahhas has yet to provide a copy of the DVD video to staff. Nevertheless, we will try to contact and continue to work with Mr. Nahhas to have the video available for viewing as scheduled. However, to the extent Mr. Nahhas is unable or unwilling to provide an advance copy of the video in DVD format by Monday of next week, we cannot guarantee viewing of the video without incident.

SW:ks



*To enrich lives through effective and caring service*

March 6, 2008



**Stan Wisniewski**  
Director

**Kerry Silverstrom**  
Chief Deputy

TO: Small Craft Harbor Commission

FROM: Stan Wisniewski, Director

**SUBJECT: ITEM 4b – APPROVAL OF OPTION FOR AMENDED AND  
RESTATED LEASE TO FACILITATE REDEVELOPMENT –  
PARCEL 21 (HOLIDAY HARBOR) - MARINA DEL REY**

Item 4b on your agenda pertains to an option to extend the Parcel 21 (Holiday Harbor) lease, which was previously considered by your Commission on two separate occasions. The proposed project entails the development of a new 108 slip marina and a parking structure (56 feet in height) for 447 cars that also contains 29,000 square feet of commercial space. For your convenience, we have attached a copy of the Board letter that explains the details of the proposed transaction, including the need for the lessee to pursue a Local Coastal Program (LCP) amendment to relocate 94 public parking spaces from Parcel OT to Parcel 21, as well as a development permit modification to transfer the yacht club and marine commercial uses from Parcel 20 to Parcel 21. The exhibits to the Board letter include a copy of the proposed Option to Amend Lease Agreement and a copy of the proposed Amended and Restated Lease Agreement, both of which reflect changes made in response to discussions at last month's meeting. Most significant of the changes is that lessee be required to relocate the 94 public parking spaces from Parcel OT onto Parcel 21 without the ability to petition for relief from this requirement. For a more detailed history and background of the project please read the attached Addendum.

While we recognize that the California Coastal Commission (CCC) at its January meeting included a recommendation as part of its periodic review of the Marina LCP to oppose any reduction in the number of slips sized 35 feet and under, we are recommending approval of the option and lease extension agreement for Parcel 21 in order to conclude the proprietary phase of the development and allow the project to proceed to the regulatory phase, at which time the regulatory agencies including the CCC will evaluate the project, including the dock plan, on its merits.

Your Commission's endorsement of the Chief Executive Officer's recommendation to the Board of Supervisors as contained in the attached letter is requested.

SW:SHK;jg

Attachments

April 8, 2008

The Honorable Board of Supervisors  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, California 90012

Dear Supervisors:

**DEPARTMENT OF BEACHES AND HARBORS: APPROVAL OF OPTION FOR  
AMENDED AND RESTATED LEASE TO FACILITATE REDEVELOPMENT –  
PARCEL 21 (HOLIDAY HARBOR) - MARINA DEL REY  
(4th DISTRICT)  
(4 VOTES)**

**IT IS RECOMMENDED THAT YOUR BOARD:**

1. Find that the proposed Option to Amend Lease Agreement, attached as Exhibit A, is categorically exempt under the California Environmental Quality Act pursuant to classes 1(r) and 4(j) of the County's Environmental Document Reporting Procedures and Guidelines.
2. Approve and authorize the Chair of the Board to sign the attached Option to Amend Lease Agreement granting to the current lessee, upon fulfillment of stated conditions, the right to extend the terms of its existing ground lease on Parcel 21 by 39 years.

**PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION**

The Parcel 21 lessee, Goldrich & Kest Industries ("Lessee"), has an affiliate that is the prospective Parcel OT lessee. As part of the Parcel OT development plan, a portion of the required replacement public parking is to be placed in a parking garage to be constructed on Parcel 21. Additionally, the Department of Beaches and Harbors ("Department") desires to reacquire a portion of Parcel 21 to expand a County-owned public parking lot (Parcel GR) serving the Marina Beach. Accordingly, an agreement was negotiated with Lessee for the redevelopment of the Parcel 21 property.

The proposed Option to Amend Lease Agreement ("Option"), attached as Exhibit A, will allow Lessee to exercise its option and receive the benefits of the Amended and Restated Lease ("Restated Lease") attached as Exhibit B, upon demonstration that it has satisfied all of the conditions for exercise contained in the Option and has received all planning, zoning, environmental and other entitlement approvals required to be obtained from governmental authorities for the construction of the redevelopment

project.

Whether or not ultimately exercised, the Parcel 21 Option puts into effect modern lease provisions that have been negotiated in new and extended leases previously presented for your Board's consideration, including: a) reimbursement of County negotiating costs; b) payment of a non-refundable \$100,000 option fee (which shall be credited against the extension fee if the Option is exercised); c) establishment of a sinking fund to remove leasehold improvements at lease termination; d) modernized "baseball" type arbitration; e) lease assignment and ownership disclosure requirements; f) a 6% late fee plus interest for any late payments; g) security deposit in the amount of 3 months' minimum rent; h) new insurance requirements with insurance levels renegotiated each 5<sup>th</sup> lease anniversary date; i) County approval rights over construction plans and specifications; j) CPA-certified annual gross revenue reports; k) required maintenance in conformance with Marina standards; and l) liquidated damages of \$100 per day (adjusted for inflation) per cited maintenance deficiency for each deficiency that remains uncorrected after a specified cure period.

If the Option is exercised, in addition to the terms identified just above, the Restated Lease for Parcel 21 also provides for a 39-year lease extension; payment of a \$100,000 lease extension fee (already paid as a non-refundable option fee); demolition of the existing landside improvements; construction of a new commercial building containing not less than 29,000 square feet and an attached 56 feet high parking structure of 447 parking spaces to accommodate boater parking for not only Parcel 21, but also Parcel 20 (the leasehold of another Lessee affiliate), parking for the commercial uses in the new commercial building, and 94 replacement public parking spaces from Parcel OT; complete dock replacement of the existing 182 slips with 108 new slips [Note the lessee's calculation, as illustrated on the proposed plans, indicates the existing anchorage to consist of 148 slips, not 182 slips as we have presented, based on the lessee's belief that each double slip should be counted as one slip rather than two slips]; construction and maintenance of a new waterfront promenade; reconveyance to County at a specified date of the westerly 207 feet of the current leasehold to be used for additional public parking; establishment of a Capital Improvement Fund to be funded by amounts equal to 1.0% of gross revenues derived from the leasehold for years 4 and 5 following completion of the improvements, 1.25% of gross revenues derived from the leasehold for years 6 through 10 and 1.5% of gross revenues thereafter; establishment of a Renovation Fund in the amount of 1.0% of gross revenues annually that must be fully expended to physically reposition the project to then current market requirements between 2034 and 2036, with funding ceasing thereafter; a second complete replacement of the anchorage improvements between years 30 and 35 after the effective date of the Restated Lease; County participation in leasehold sale and/or refinance; County right to recapture the leasehold if the Lessee pursues its sale; and other miscellaneous improvements to the lease (e.g., enhanced audit and record-keeping standards).

Lessee must complete the parking structure as a condition to issuance of the certificate of occupancy for the proposed development of a seniors' congregate care facility on Parcel OT. Once the Lessee and the Parcel OT optionee have obtained all necessary

project entitlements and have fulfilled the other requirements entitling them to exercise the Options for both parcels, we will return to your Board for authority to execute the Restated Lease in substantially the form attached.

County has also agreed to revise the leasehold boundary to include a portion of the existing improvements on the westerly most dock on Parcel 21 that were inadvertently built outside the existing leasehold boundary. The water area added to the parcel will be redeveloped to include an additional five (5) boat slips.

The Department has obtained an appraisal that concludes the return to the County from the lease extension for Parcel 21 is equivalent to, or greater than, fair market value.

### **Implementation of Strategic Plan Goals**

In furtherance of County Goals #1 and #4, "Service Excellence" and "Fiscal Responsibility," the recommended action will allow the Department to implement that portion of its Strategic Plan that enhances strategic partnerships with existing and prospective lessees through proactive implementation of the Marina del Rey Asset Management Strategy toward enhancing public access to and enjoyment of the Marina through property redevelopment and modernized lease provisions.

The following chart details the proposed deal terms of the Restated Lease providing for the 39-year lease extension as they relate to your Board's existing lease extension policy:

**REDEVELOPMENT**  
Development of new  
improvements

• **Redevelopment Work:** Lessee shall demolish the existing improvements on the premises and construct the following new improvements within five years of receipt of entitlements:

(i) **New Commercial Building:** A new commercial building containing not less than 29,000 square feet of rentable space and an attached 56 feet high parking structure to accommodate 447 cars. The new commercial building will provide replacement space for all existing landside uses on Parcel 21 and will provide replacement space for the yacht club and office uses presently on Parcel 20. The attached parking structure shall provide parking for the uses contained in the new commercial building, boater parking for Parcels 20 and 21, and 94 public parking spaces moved from Parcel OT. The square footage to be provided for each use and the parking to be provided for each use are summarized in the table below:

New Commercial Building	Sq. Ft. Provided	Parking Provided
Yacht Club	5,000	106
Health Club	10,000	20
Retail	6,000	23
Office	8,000	21
Parcel 20 Boater Parking	--	112
Parcel 21 Boater Parking	--	71
Parcel OT Replacement Parking	--	94
Total	29,000	447

(ii) **Dock Replacement:** Complete replacement of existing docks

<b>REDEVELOPMENT</b> (continued)	<p>containing 182 slips with 108 slips made of concrete or other material acceptable to the Department Director, with a second dock replacement between the 30th and 35th year from the effective date of the Restated Lease;</p> <p>(iii) Waterfront Promenade: Construction and maintenance of a waterfront promenade to run the length of the bulkhead.</p> <ul style="list-style-type: none"><li>• Parcel Size Adjustment: The leasehold area shall be reduced by removing the approximately 207 linear feet from the westerly landside area, excluding the Waterfront Promenade area. The parcel size adjustment shall occur up to six months following the completion of construction of the replacement parking for Parcel OT.</li><li>• Total development cost not less than \$13 million (\$1.35 million for Dock Replacement; \$11.65 million for New Commercial Building and Waterfront Promenade).</li><li>• Construction of Redevelopment Work to be completed within five years from effective date of the Restated Lease, subject to force majeure, which in no event shall exceed two years.</li><li>• <u>Capital Improvement Fund</u>. A Capital Improvement Fund to be funded annually by Lessee will be maintained during the term of the lease according to the following schedule: Years 1-3 after completion: none; Years 4-5: 1% of gross revenue; Years 6-10: 1.25% of gross revenue; Years 11+: 1.50% of gross revenue. The Capital Improvement Fund must be fully expended for capital expenditures by ten years prior to the expiration date of the lease, which expenditures are subject to prior approval by the Department Director, not to be unreasonably withheld.</li><li>• <u>Renovation Fund</u>. A Renovation Fund equal to 1% of gross revenue to be funded annually by Lessee until completion of the required renovation to physically reposition the project to then current market requirements between 2034 and 2036. Thereafter, no Renovation Fund shall be required. The Renovation Fund may be maintained in the form of a letter of credit. Lessee to provide a renovation plan and budget, subject to County approval.</li></ul>
<b>LEASE TERM</b>	<ul style="list-style-type: none"><li>• Option to extend lease on Parcel 21 by 39 years from 8/31/2026 to 8/31/2065.</li></ul>
<b>EXTENSION FEE</b> Fee equal to or commensurate with value of the extension	<ul style="list-style-type: none"><li>• The amount of the extension fee shall be \$100,000, payable as set forth below.</li><li>• Lessee shall pay a non-refundable option fee of \$100,000 prior to the granting of the Option. Such payment shall be credited against the extension fee if the Option is exercised, but shall be non-refundable in the event the Option is not exercised.</li></ul>

<b>MARKET RATE RENTS</b> Ensure fair market rents	<ul style="list-style-type: none"> <li>• Minimum annual rent during construction to be reset at the beginning of construction equal to 75% of Lessee's previous three years' average total annual rent paid to County.</li> <li>• Minimum annual rent upon earlier of the date of receipt of the first Certificate of Occupancy (temporary) following commencement of construction ("CO Date") or Required Completion Date equal to \$215,000. Thereafter, minimum rent reset every three years equal to 75% of previous three years' average total annual rent paid to County until first renegotiation.</li> <li>• Percentage and minimum rents are subject to renegotiation to fair market rent ten years after earlier of CO Date or Required Completion Date and every ten years thereafter.</li> </ul>
<b>PARTICIPATION IN SALE AND REFINANCE</b> Secure County participation in sale and refinance of leasehold	<ul style="list-style-type: none"> <li>• Sale Participation: Greater of 5% of Gross Proceeds or 20% of Net Proceeds upon assignment or other direct or indirect transfer of leasehold.</li> <li>• Refinance Participation: 20% of net loan proceeds not reinvested in leasehold.</li> </ul>
<b>COUNTY ADMIN. COSTS</b> Ensure payment for County costs for lease extension	<ul style="list-style-type: none"> <li>• Lessee agrees to reimburse County for costs associated with lease extension negotiations and option and lease preparation, including all appraisal, consultant and legal costs.</li> </ul>
<b>COUNTY INCOME CONTINUITY</b> Ensure County revenue flow during development	<ul style="list-style-type: none"> <li>• Minimum annual rent during construction to be reset at the beginning of construction equal to 75% of Lessee's previous three years' average total annual rent paid to County.</li> </ul>
<b>RIGHT TO RECAPTURE</b>	<ul style="list-style-type: none"> <li>• Provide County with a right to purchase the leasehold interest if Lessee desires to either assign or sell a controlling interest.</li> </ul>
<b>ARBITRATION</b>	<ul style="list-style-type: none"> <li>• Arbitration will use rent-a-judge procedure. "Baseball" type arbitration provision.</li> </ul>
<b>LEASE ASSIGNMENT - DISCLOSURE ISSUES</b>	<ul style="list-style-type: none"> <li>• Lease assignment and ownership disclosure requirements in accord with standard County policy.</li> </ul>
<b>DOCKMASTER</b>	<ul style="list-style-type: none"> <li>• Lessee to maintain a dockmaster to manage the anchorage for the term of the lease.</li> </ul>



<b>PROMENADE</b>	<ul style="list-style-type: none"><li>• Lessee to construct a waterfront promenade in compliance with Marina Local Coastal Program and subject to County's reasonable approval of plans.</li><li>• Promenade area to remain within the leasehold, as described in Parcel Size Adjustment above. Lessee retains responsibility for construction and maintenance of Promenade.</li></ul>
<b>APPRAISAL</b>	<ul style="list-style-type: none"><li>• The Department has obtained an independent appraisal confirming the return to the County from the lease extension is equivalent to, or greater than, fair market value.</li></ul>
<b>ENTITLEMENTS: SITE COVERAGE, HEIGHT &amp; LAND USES</b>	<ul style="list-style-type: none"><li>• If Lessee is unable to obtain all necessary entitlement and financing approvals within the 12-month Option period, the Director may grant up to two six-month extensions if Lessee can demonstrate it has diligently pursued those approvals.</li><li>• If Lessee obtains approvals within the 12-month (or 18- or 24-month) period but such approvals are subject to litigation or appeal brought by a third party, then the option exercise date will be tolled pending the resolution of such litigation or appeal; provided that the option exercise date shall in no event be later than four years after the date of the grant of Option.</li><li>• Density, site coverage, open space, view corridor, building height, entitlement and land uses are subject to Lessee obtaining all County and Coastal Commission planning and entitlement approvals, including that of the Design Control Board.</li><li>• Lessee may pursue County and Coastal Commission planning and entitlements approvals with respect to the provision of interim replacement parking and interim tenant space during construction.</li></ul>

#### **Additional Matters**

<b>OTHER TERMS</b>	<ul style="list-style-type: none"><li>a) Ten years prior to expiration of lease, Lessee to structure funding for removal of improvements (at County's election).</li><li>b) Rental renegotiation and insurance disputes subject to rent-a-judge procedure pursuant to "baseball" type arbitration.</li><li>c) Maintenance standards for improvements to conform to Marina del Rey standards as revised from time to time.</li><li>d) Lease administrative items include: a) late fee of 6% plus interest at prime plus 3% for any late payments; b) security deposit equal to three months' minimum rent; c) insurance levels reset/renegotiated upon execution of the Restated Lease and every five years thereafter; d) County approval rights over all construction plans and specifications; and e) enhanced audit and record-keeping standards.</li><li>e) Liquidated damages of \$100 per day (adjusted for inflation) for each cited maintenance deficiency that remains uncured after a specified cure period, to be assessed against the security deposit.</li></ul>
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### **FISCAL IMPACT/FINANCING**

The Restated Lease reflects the current market rate percentage rents for all relevant categories. It will produce two categories of fiscal benefit to the County: 1) an extension fee; and 2) rent increases due to construction of a new commercial building containing not less than 29,000 square feet of rentable space and new docks. Each component is discussed in detail below.

#### **Extension Fee**

Lessee is required to pay an extension fee of \$100,000. A non-refundable Option fee of \$100,000 is due upon the execution of the Option, which may be credited against the extension fee if the Option is exercised.

#### **Rent Increase Due to New Construction**

The total rent derived from Parcel 21 during fiscal year 2006-2007 was approximately \$296,000.00. After construction, lease-up and stabilization, annual County rent is projected to rise to approximately \$336,900, an annual increase of approximately \$40,900.

As an additional requirement of the Restated Lease, the Lessee will reconvey back to the County the westerly 207 feet of Parcel 21 to be integrated into the adjacent County Parcel GR public parking lot in order to form a larger public parking lot. Lessee will also be responsible for the cost of converting the westerly 207 feet being reconveyed to a parking lot as per the County's plan.

Costs of consultants involved in the negotiation and development of the Option and Restated Lease are being reimbursed by the Lessee.

### **FACTS AND PROVISIONS/LEGAL REQUIREMENTS**

Without exercise of the Option, the term of the lease for Parcel 21, which commenced September 1, 1966, will expire August 31, 2026.

Concurrent with the exercise of the Parcel 21 Option, an option as to Parcel OT must also be exercised by Lessee's affiliate, both of which may be exercised only after the entitlements for each project are received. The Lessee has made application to the Department of Regional Planning for its discretionary land use entitlements under the applicable standards of the Marina del Rey Local Coastal Program (LCP), which application is still under review. The Parcel 21 application seeks an LCP amendment to relocate 94 public parking spaces from Parcel OT to Parcel 21 and to modify the development permit conditions to transfer the yacht club and marine commercial uses from Parcel 20 to Parcel 21. The Parcel OT application seeks an LCP amendment to transfer land use entitlements across development zones to allow for the build-out of congregate care units and to relocate 94 public parking spaces to Parcel 21. Approval

of the Option is without prejudice to the County's full exercise of its regulatory authority in the consideration of the land use entitlements required for the possible exercise of the Option.

Amendment and extension of the existing lease is authorized by Government Code Sections 25907 and 25536. The extended lease term is in conformance with the maximum 99-year period authorized by California law.

At its meeting of March 12, 2008, the Small Craft Harbor Commission \_\_\_\_\_ the recommendation to approve the Option and the Restated Lease in the form attached. County Counsel has approved the documents as to form.

### **ENVIRONMENTAL DOCUMENTATION**

The Option is categorically exempt under the California Environmental Quality Act pursuant to classes 1(r) and 4(j) of the County's Environmental Document Reporting Procedures and Guidelines. Approval of the Option does not authorize construction or reconstruction of any improvements on the parcel. The discretionary land use entitlements and the corresponding environmental documentation necessary to implement the proposed redevelopment contemplated by the Option and the Restated Lease are under review by the Department of Regional Planning.

### **CONTRACTING PROCESS**

The new Restated Lease will be available to the Lessee upon the exercise of the Option. Upon Lessee's demonstration that it has satisfied the conditions for exercise contained in the Option and has received all planning, zoning, environmental and other entitlement approvals required to be obtained from governmental authorities for the construction of the development project, we will return to your Board with final confirmation that the conditions and approvals for exercise contained in the Option have been satisfied. At that time, we will request authorization for execution of the Restated Lease.

### **IMPACT ON CURRENT SERVICES (OR PROJECTS)**

There is no impact on other current services or projects.

The Honorable Board of Supervisors  
April 8, 2008  
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**CONCLUSION**

Authorize the Executive Officer/Clerk of the Board to send two copies of the executed Option to the Department of Beaches and Harbors.

Respectfully submitted,

William T Fujioka

SW:SK:GB:dlg

Attachments (2)

c: County Counsel

## **ADDENDUM**

### **January 23, 2008 SCHC Meeting**

On January 23, 2008, the Lessee submitted an original dock plan, which included 87 slips ranging from 25 feet to 50 feet in length for an average slip size of 36.9 linear feet. The original dock plan resulted in a reduction of 95 slips from the current 182 slips available in the marina. At that time, your Commission requested the Lessee to reevaluate and redesign the original dock plan in an effort to increase the number of boat slips and return to your Commission for reconsideration.

### **February 13, 2008 SCHC Meeting**

On February 13, 2008, the Lessee submitted a revised dock plan reflecting a changed configuration in which the new anchorage increased the number of slips from 87 slips in the prior submission to 103 slips, for a reduction of 79 slips instead of 95 slips. In order to design this new configuration, the lessee eliminated all slips considered to be large slips, including the existing ten 40-foot slips, opting instead to dedicate the entire marina to slips of 35 feet or less with an average slip size of 31.6 linear feet. Public testimony was received during the meeting and the Lessee was directed to hold a separate community forum to obtain public input on the proposed dock plan. In addition, your Commission requested further study and clarification on: 1) the number of boats currently moored in the Parcel 21 marina; 2) the possibility of adding additional boat slips by decreasing the width of the slips designed for powerboats; 3) the prospect of adjusting the boundary lines to reflect the existing configuration and thus allowing additional slips to be built in the encroached area; and 4) the need for a plan to mitigate impacts to boaters that may be displaced during construction of the new dock facilities.

### **Responses to Commissioners' Request for Additional Information**

The Department of Beaches and Harbors surveyed the anchorage on February 13, 2008, and confirmed a total of 160 boats were in the marina with 12 double slips being occupied by two boats. The remaining double slips were occupied by a single boat. (The 160 boats include 147 that were moored in slips and 13 that were moored on end- or side-ties). The lessee's calculation, as illustrated on the existing dock plan, indicates the existing anchorage to consist of 148 slips not 182 slips as we have previously presented, based on the lessee's belief that each double slip should be counted as one slip rather than two.

With regards to how many more slips could be added if the Lessee reconfigured the powerboat-width slips to sailboat-width slips in the proposed plan, the lessee has evaluated the possibility of including more sailboat slips and determined that the maximum number of slips that can be added is six (6) slips. The proposed plan currently has 89 powerboat and 19 sailboat slips of varying sizes. To the extent the plan is changed to accommodate the additional six sailboat slips, the total slip count would increase to 114 slips, with 25 slips available for powerboats and 89 available for sailboats. While a change in the plan would result in a slight increase in the number of slips, from an operational perspective, the lessee has indicated that the narrower slips would limit operational flexibility over the long term to accommodate powerboats in the marina. Therefore, the lessee is recommending that the wider powerboat slips stay in the plan as the wider slips will be able to accommodate both power and sailboats docking in the marina.

Concerning what happened to Dock 3700 in the latest development plan, four (4) of the existing slips on Dock 3700 were constructed outside the parcel boundary during the original construction of the dock and were scheduled to be eliminated so that the new docks would be built within the existing parcel boundary. The Department of Beaches and Harbors has agreed to initiate a boundary adjustment to reflect the existing configuration of Dock 3700 and thus allow additional slips to be built on that water area. The addition of the water area increases the number of boat slips that can be constructed in the marina from 103 slips to 108 slips. The existing 182-slip site plan and the proposed 108-slip plan are attached for your review and consideration.

In answer to how the lessee intends to mitigate impacts to boaters impacted by the redevelopment, the lessee has agreed to submit a plan for the phasing of dock construction and addressing displaced boaters, including, (x) priority leasing to displaced boaters in good standing of vacant slips available in other marinas in Marina del Rey leased or controlled by Lessee or its affiliates, and (y) priority re-leasing to displaced boaters in good standing of the new slips on Parcel 21 upon completion of construction of the entire marina .

### **Community Meeting about Dock Plan**

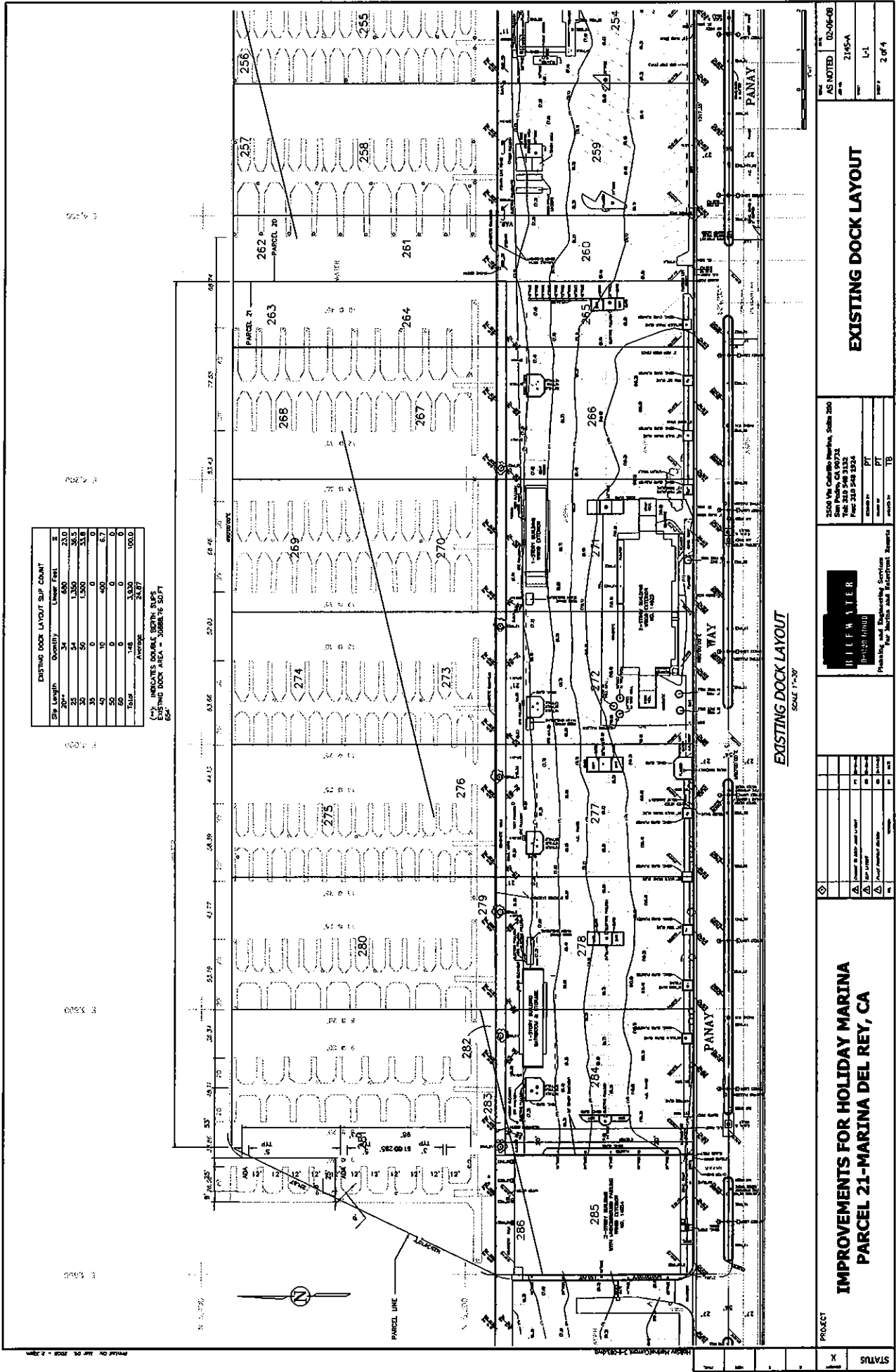
The Lessee held a community meeting on February 26, 2008 to obtain input from the boating community about the proposed 108 slip dock plan. While representatives from We are MDR, LA Mariners, and People Organized for Westside Renewal (POWER) did not attend the meeting, it was attended by more than 20 interested parties representing a cross section of constituencies including recreational boaters, existing slip tenants, boat brokers, and yacht club members. While the group was in

section of constituencies including recreational boaters, existing slip tenants, boat brokers, and yacht club members. While the group was in general agreement that a complete replacement of the Parcel 21 anchorage is needed, many members of the group voiced serious concern about the lack of larger boat slips in the proposed dock plan. More specifically, some attendees were concerned about displacement of the larger boat slip tenants as the existing marina has a total of ten 40 foot boat slips that will not be replaced, as the revised dock plan eliminated all boat slip sizes above 35 feet. Consequently, some attendees recommended the dock plan be changed to include larger slips to reflect a more balanced approach for accommodating the needs of both large and small recreational boaters, as was previously proposed by the lessee in the original 87 slip dock plan which is attached for your information. Regardless, the lessee is prepared to proceed with the development of either the original 87 slip dock plan which will accommodate larger boat tenants or the proposed 108 slip dock plan which is limited to watercraft 35 feet and under.


Attachments (3)

EXISTING DOCK LAYOUT SLP COUNT			
Size Length	Quantity	Linear Feet	%
20'x40'	34	680	23.0
25	54	1,350	36.3
30	50	1,500	33.8
35	0	0	0
40	0	0	0
45	0	0	0
50	0	0	0
55	0	0	0
60	0	0	0
Total	148	3,530	100.0
Average		24.87	

(\*) INDICATES DOUBLE BOTTOM SLIPS  
EXISTING DOCK AREA = 308876 SQ FT



EXISTING DOCK LAYOUT  
SCALE 1"=30'

STATUS PROJECT	IMPROVEMENTS FOR HOLIDAY MARINA PARCEL 21-MARINA DEL REY, CA	 <p>2500 Via Calle Real, Suite 200 San Pedro, CA 90732 Phone: 310-504-1324 Fax: 310-504-1324</p> <p>Planning and Engineering Services FOR MARINA AND RECREATION</p>	EXISTING DOCK LAYOUT AS NOTED 02-06-08 2195-A 1-1 2 of 4
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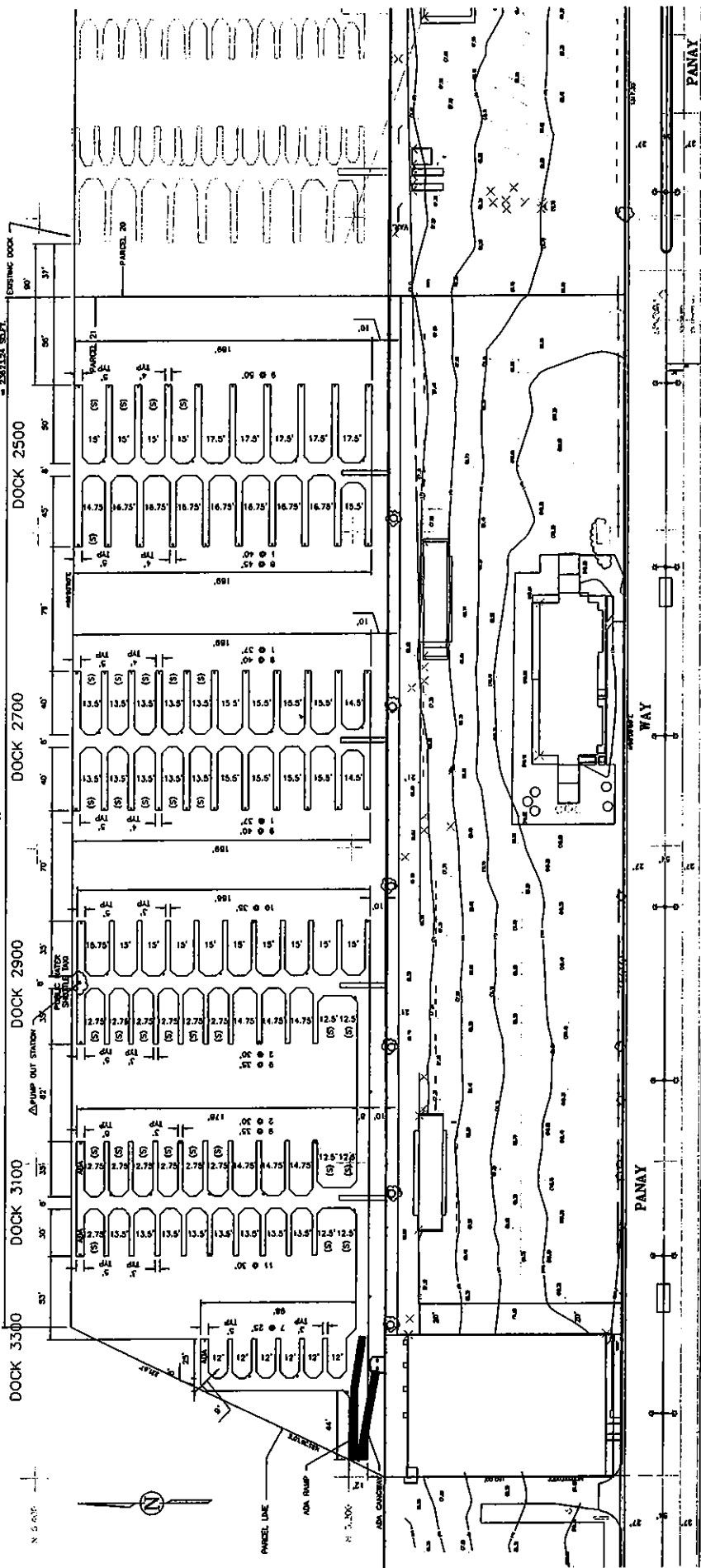




PROPOSED DOCK LAYOUT SLIP COUNT			
Slip Length	Quantity	Linear Feet	%
25'	8	200	4.63
30'	12	360	7.93
35'	12	420	9.26
40'	12	480	10.58
45'	12	540	11.91
50'	12	600	13.23
55'	12	660	14.56
60'	12	720	15.88
65'	12	780	17.21
70'	12	840	18.53
75'	12	900	19.86
80'	12	960	21.18
85'	12	1020	22.51
90'	12	1080	23.83
95'	12	1140	25.16
100'	12	1200	26.48
105'	12	1260	27.81
110'	12	1320	29.13
115'	12	1380	30.46
120'	12	1440	31.78
125'	12	1500	33.11
130'	12	1560	34.43
135'	12	1620	35.76
140'	12	1680	37.08
145'	12	1740	38.41
150'	12	1800	39.73
155'	12	1860	41.06
160'	12	1920	42.38
165'	12	1980	43.71
170'	12	2040	45.03
175'	12	2100	46.36
180'	12	2160	47.68
185'	12	2220	49.01
190'	12	2280	50.33
195'	12	2340	51.66
200'	12	2400	52.98
205'	12	2460	54.31
210'	12	2520	55.63
215'	12	2580	56.96
220'	12	2640	58.28
225'	12	2700	59.61
230'	12	2760	60.93
235'	12	2820	62.26
240'	12	2880	63.58
245'	12	2940	64.91
250'	12	3000	66.23
255'	12	3060	67.56
260'	12	3120	68.88
265'	12	3180	70.21
270'	12	3240	71.53
275'	12	3300	72.86
280'	12	3360	74.18
285'	12	3420	75.51
290'	12	3480	76.83
295'	12	3540	78.16
300'	12	3600	79.48
305'	12	3660	80.81
310'	12	3720	82.13
315'	12	3780	83.46
320'	12	3840	84.78
325'	12	3900	86.11
330'	12	3960	87.43
335'	12	4020	88.76
340'	12	4080	90.08
345'	12	4140	91.41
350'	12	4200	92.73
355'	12	4260	94.06
360'	12	4320	95.38
365'	12	4380	96.71
370'	12	4440	98.03
375'	12	4500	99.36
380'	12	4560	100.68
385'	12	4620	102.01
390'	12	4680	103.33
395'	12	4740	104.66
400'	12	4800	105.98
405'	12	4860	107.31
410'	12	4920	108.63
415'	12	4980	110.96
420'	12	5040	112.28
425'	12	5100	113.61
430'	12	5160	114.93
435'	12	5220	116.26
440'	12	5280	117.58
445'	12	5340	118.91
450'	12	5400	120.23
455'	12	5460	121.56
460'	12	5520	122.88
465'	12	5580	124.21
470'	12	5640	125.53
475'	12	5700	126.86
480'	12	5760	128.18
485'	12	5820	129.51
490'	12	5880	130.83
495'	12	5940	132.16
500'	12	6000	133.48
505'	12	6060	134.81
510'	12	6120	136.13
515'	12	6180	137.46
520'	12	6240	138.78
525'	12	6300	140.11
530'	12	6360	141.43
535'	12	6420	142.76
540'	12	6480	144.08
545'	12	6540	145.41
550'	12	6600	146.73
555'	12	6660	148.06
560'	12	6720	149.38
565'	12	6780	150.71
570'	12	6840	152.03
575'	12	6900	153.36
580'	12	6960	154.68
585'	12	7020	156.01
590'	12	7080	157.33
595'	12	7140	158.66
600'	12	7200	160.98
605'	12	7260	162.31
610'	12	7320	163.63
615'	12	7380	164.96
620'	12	7440	166.28
625'	12	7500	167.61
630'	12	7560	168.93
635'	12	7620	170.26
640'	12	7680	171.58
645'	12	7740	172.91
650'	12	7800	174.23
655'	12	7860	175.56
660'	12	7920	176.88
665'	12	7980	178.21
670'	12	8040	179.53
675'	12	8100	180.86
680'	12	8160	182.18
685'	12	8220	183.51
690'	12	8280	184.83
695'	12	8340	186.16
700'	12	8400	187.48
705'	12	8460	188.81
710'	12	8520	190.13
715'	12	8580	191.46
720'	12	8640	192.78
725'	12	8700	194.11
730'	12	8760	195.43
735'	12	8820	196.76
740'	12	8880	198.08
745'	12	8940	199.41
750'	12	9000	200.73
755'	12	9060	202.06
760'	12	9120	203.38
765'	12	9180	204.71
770'	12	9240	206.03
775'	12	9300	207.36
780'	12	9360	208.68
785'	12	9420	210.01
790'	12	9480	211.33
795'	12	9540	212.66
800'	12	9600	213.98
805'	12	9660	215.31
810'	12	9720	216.63
815'	12	9780	217.96
820'	12	9840	219.28
825'	12	9900	220.61
830'	12	9960	221.93
835'	12	10020	223.26
840'	12	10080	224.58
845'	12	10140	225.91
850'	12	10200	227.23
855'	12	10260	228.56
860'	12	10320	229.88
865'	12	10380	231.21
870'	12	10440	232.53
875'	12	10500	233.86
880'	12	10560	235.18
885'	12	10620	236.51
890'	12	10680	237.83
895'	12	10740	239.16
900'	12	10800	240.48
905'	12	10860	241.81
910'	12	10920	243.13
915'	12	10980	244.46
920'	12	11040	245.78
925'	12	11100	247.11
930'	12	11160	248.43
935'	12	11220	249.76
940'	12	11280	251.08
945'	12	11340	252.41
950'	12	11400	253.73
955'	12	11460	255.06
960'	12	11520	256.38
965'	12	11580	257.71
970'	12	11640	259.03
975'	12	11700	260.36
980'	12	11760	261.68
985'	12	11820	263.01
990'	12	11880	264.33
995'	12	11940	265.66
1000'	12	12000	266.98

PALE NOTE  
TOTAL NO. OF PILES = 79

(\*) - INDICATES SOME SLIPS ARE DOUBLE BERTH SLIPS  
(S) - INDICATES SOME SLIPS ARE SINGLE BERTH SLIPS  
PROPOSED DOCK AREA = 2,281,124 S.F.  
EXISTING DOCK AREA = 2,281,124 S.F.



<b>IMPROVEMENTS FOR HOLIDAY MARINA</b> <b>PARCEL 21-MARINA DEL REY, CA</b>		PROJECT STATUS X
2280 Via Camino Real, Suite 200 Marina del Rey, CA 90291 Tel: 310 546 3333 Fax: 310 546 3334		AS NOTED 02-07-07 2105-A L-2 3 of 4
<b>WILFAYER</b> Structural Engineering Planning and Engineering Services for Marine and Recreational Structures		2280 Via Camino Real, Suite 200 Marina del Rey, CA 90291 Tel: 310 546 3333 Fax: 310 546 3334

**OPTION TO AMEND LEASE AGREEMENT  
(PARCEL 21)**

THIS OPTION TO AMEND LEASE AGREEMENT ("Agreement") is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2008, by and between the COUNTY OF LOS ANGELES ("County") and HOLIDAY-PANAY WAY MARINA, L.P. a California limited partnership ("Lessee").

**R E C I T A L S**

A. County and Lessee, or its predecessors-in-interest, entered into Lease No. 11210 dated September 27, 1966, as amended (the "Existing Lease"), pursuant to which Lessee leases from County certain real property in the Marina del Rey Small Craft Harbor commonly known as Parcel No. 21, as more particularly described in the Existing Lease (the "Existing Premises").

B. The term of the Existing Lease is currently scheduled to expire on August 31, 2026 (the "Existing Expiration Date").

C. Lessee has requested County, and County is willing, to grant Lessee an option to extend the term of the Existing Lease through August 31, 2065.

D. If Lessee exercises such option to extend the term, the parties desire to expand the Existing Premises to incorporate the adjacent water area (the "Additional Premises") on which a portion of the westerly-most anchorage improvements were inadvertently constructed outside the Existing Premises. The Existing Premises and Additional Premises are collectively referred to in this Agreement as the "Premises" and are described in Exhibit A attached to the Restated Lease (as defined below).

**A G R E E M E N T**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, County and Lessee agree as follows:

1. Grant of Option. County hereby grants to Lessee an option (the "Option") to extend the term of the Existing Lease through August 31, 2065 (the "Extended Expiration Date") and to expand the Existing Premises to add the Additional Premises. Such extension and expansion shall be on the terms and conditions set forth in the form of Amended and Restated Lease Agreement for Parcel 21 attached to this Agreement as Exhibit A (the "Restated Lease"). In consideration of County's grant of the Option to Lessee, and as a condition to the effectiveness of the Option, Lessee shall pay to County concurrent with Lessee's execution of this Agreement the sum of One Hundred Thousand Dollars (\$100,000.00) (the "Option Fee").

2. Option Term. The term of the Option (the "Option Term") shall commence on the date of this Agreement and expire on that date (the "Option Expiration Date") which is the earlier of (i) forty-five (45) days following the later of the Entitlement Receipt Date under this Agreement and the "Entitlement Receipt Date" under

the Parcel 147 Option Agreement, as defined in Section 4.4(b) of this Agreement (the "Parcel 147 Entitlement Receipt Date"), or (ii) the date that is one (1) year following the date of this Agreement (the "Outside Expiration Date").

For purposes hereof, the "Entitlement Receipt Date" shall mean the first date upon which (a) Lessee has received all discretionary planning and zoning land use entitlements, permits and other approvals required to be obtained from governmental authorities (including the County and the California Coastal Commission) for the construction of the Redevelopment Work (as defined below), including, without limitation, for the development on and relocation to the Premises of the Replacement Parcel 147 Parking Spaces (as defined in Section 15.20.1 of the Restated Lease) and the development on and relocation to the Premises of the Additional Parcel 20 Parking Spaces (as defined in Section 15.20.1 of the Restated Lease), and has satisfied all conditions to the issuance of a building permit for the Redevelopment Work other than the payment of any applicable building permit fee (all of the matters described in this clause (a) are collectively referred to as the "Entitlements"), (b) any appeal period to contest the issuance of the Entitlements has lapsed, and (c) there is no proceeding or litigation pending to appeal the issuance of the Entitlements, or to enjoin or restrain the performance of the Redevelopment Work (not including any proceeding or litigation brought by or on behalf of any partner, shareholder or member of, or any other person or entity affiliated with, or otherwise directly or indirectly having an ownership interest in, Lessee or the Parcel 147 Lessee (a "Lessee Affiliate")), or if such a proceeding or litigation is pending, then the date such proceeding or litigation has been dismissed or a decision or judgment rendered thereon, which decision or judgment is not subject to further appeal.

For purposes of this Agreement, the "Redevelopment Work" shall mean the demolition of the existing Improvements (as defined in the Restated Lease) currently located on the Premises and the construction of new Improvements in accordance with the Redevelopment Plan attached to the Restated Lease as Exhibit B, including without limitation: (i) a new commercial building containing not less than 29,000 square feet of rentable area of space to be initially allocated approximately as follows: 5,000 rentable square feet of yacht club space, 10,000 rentable square feet of health club space, 2,916 rentable square feet of retail space and 11,432 rentable square feet of marine commercial office space; (ii) an attached parking structure with 447 parking spaces or such other number of parking spaces as required under Section 15.20 of the Restated Lease (the "Parking Structure"); (iii) complete replacement of the existing 182 boat slips and related Improvements with approximately 108 new boat slips (with an average slip length of approximately 31.25 lineal feet) and related Improvements (the "Anchorage Replacement Work"), provided that County shall have the right to approve Lessee's proposed configuration and specifications for such slips; and (iv) the Promenade Work described in Section 15.19 of the Restated Lease.

Notwithstanding any contrary provision hereof, if by that date which is forty five (45) days prior to the Outside Expiration Date (the "Extension Request Date") (1) Lessee and the Parcel 147 Lessee have been unable to cause one or both of the Entitlement Receipt Date or the Parcel 147 Entitlement Receipt Date to occur and one or both of the Entitlement Receipt Date or the Parcel 147 Entitlement Receipt Date is (are) not

reasonably expected to occur by the Outside Expiration Date, (2) in the reasonable judgment of the Director of the Department of Beaches and Harbors of the County ("Director"), Lessee and the Parcel 147 Lessee have proceeded with diligent efforts to cause the Entitlement Receipt Date and the Parcel 147 Entitlement Receipt Date to occur by the Outside Expiration Date, and (3) on or before the Extension Request Date Lessee submits a written request in writing to Director requesting an extension of the Outside Expiration Date to afford Lessee and the Parcel 147 Lessee (as applicable) with

additional time to cause the Entitlement Receipt Date and the Parcel 147 Entitlement Receipt Date to occur (as applicable), then Director may grant, in its discretion, one or more extensions of the Outside Expiration Date, provided that (A) any extension of the Outside Expiration Date shall be limited to that period of time which, in the reasonable judgment of Director, is reasonably necessary to permit the Entitlement Receipt Date and the Parcel 147 Entitlement Receipt Date to occur, and (B) Director shall not extend the Outside Expiration Date by more than six (6) months at a time, and in no event shall Director extend the Outside Expiration Date beyond that date which is two (2) years following the date of this Agreement. The Outside Expiration Date shall not be extended under this paragraph if Lessee is in breach or default of this Agreement or the Parcel 147 Lessee is in breach or default of the Parcel 147 Option Agreement. Lessee shall not be required to pay to County a fee for any extension of the Outside Expiration Date pursuant to this paragraph.

In addition, if as of forty-five (45) days prior to the Outside Expiration Date (as such date may have been extended pursuant to the immediately preceding paragraph), the Entitlement Receipt Date or the Parcel 147 Entitlement Receipt Date has not occurred because (a) the Redevelopment Work or the Development Work under the Parcel 147 Option Agreement (the "Parcel 147 Development Work") is the subject of a pending proceeding or litigation to appeal the issuance of the Entitlements for such particular work or to enjoin or restrain the performance of the Redevelopment Work or the Parcel 147 Development Work (other than any proceeding or litigation brought by or on behalf of a Lessee Affiliate), or (b) a moratorium, temporary restraining order, injunction or other court order prohibits the issuance of the Entitlements for the Redevelopment Work or the Parcel 147 Development Work, and such moratorium, temporary restraining order, injunction or other court order also pertains to all other similar projects in Marina del Rey on land leased from the County, then as long as Lessee and/or the Parcel 147 Lessee (as applicable) continue to diligently prosecute or pursue the defense or removal of such proceeding, litigation, moratorium or court order, the Outside Expiration Date shall be extended until not later than forty-five (45) days following the date that such proceeding, litigation, moratorium or court order is resolved in favor of the issuance or validity of the Entitlements for the Redevelopment Work and the Parcel 147 Development Work (as applicable), with no further right of appeal; provided, however, in no event shall the Outside Expiration Date be extended beyond the fourth (4<sup>th</sup>) anniversary of the date of this Agreement. The Outside Expiration Date shall not be extended under this paragraph if Lessee is in breach or default of this Agreement or the Parcel 147 Lessee is in breach or default of the Parcel 147 Option Agreement. Lessee shall not be required to pay to County a fee for any extension of the Outside Expiration Date pursuant to this paragraph.

3. Exercise of Option. The Option shall be exercisable by Lessee only by Lessee's strict satisfaction on or before the Option Expiration Date of the following terms and conditions: (i) Lessee shall notify County in writing of its exercise of the Option; (ii) Lessee shall accompany the notice described in the preceding clause (i) with Lessee's execution and delivery to County of the Restated Lease with any blank or bracketed terms set forth in Exhibit A completed in accordance with the terms and provisions of this Agreement (County hereby agrees to cooperate with Lessee to permit the completion of such blank or bracketed terms); (iii) as of the date of Lessee's delivery of the notice described in clause (i) above Lessee shall not be in material breach or default of any material term or provision of the Existing Lease, after notice from County and the expiration of any applicable cure period thereunder; (iv) the Entitlement Receipt Date shall have occurred and there shall be no action or proceeding pending or, to Lessee's or County's actual knowledge, threatened, to contest the Entitlements issued as a condition to the occurrence of the Entitlement Receipt Date or to enjoin or restrain the performance of the Redevelopment Work; (v) Lessee shall have provided evidence satisfactory to County of its having sufficient financial resources, as determined by the Director in Director's reasonably judgment, to complete the Redevelopment Work; (vi) Director shall have approved all plans, specifications and other materials for the Redevelopment Work required to be submitted to Director pursuant to Section 4.3 of this Agreement; (vii) Lessee shall have satisfied the conditions to the exercise of the Option set forth in Section 4.4; and (viii) all conditions to the exercise of the Parcel 147 Option shall have been satisfied and the Parcel 147 Lessee shall have concurrently exercised the Parcel 147 Option. In addition to the foregoing conditions to the exercise by Lessee of the Option, Lessee's exercise of the Option shall be conditioned upon the submission by Lessee to the Director, and the Director's approval, of a plan for the phasing of the Anchorage Replacement Work and addressing displaced boaters, including without limitation, (x) priority leasing to displaced boaters in good standing of vacant slips available in other marinas in Marina del Rey leased or controlled by Lessee or its affiliates, and (y) priority re-leasing to displaced boaters in good standing of the new slips on the Premises upon completion of the Anchorage Replacement Work. Upon Lessee's proper and timely exercise of the Option, County shall execute and deliver the Restated Lease and the Parcel 147 Lease not later than forty-five (45) days following the date of Lessee's exercise of the Option.

4. Entitlements and Plan Preparation During Option Term.

4.1 Obtaining Entitlements. During the Option Term, Lessee shall use diligent efforts to obtain as soon as reasonable possible all Entitlements necessary to perform the Redevelopment Work and, unless otherwise directed by Director, the Off-Site Parking Improvements described in Section 4.5(a) below. Such efforts shall include Lessee's expenditure of such funds, including, without limitation, application fees, travel costs, architectural fees and consulting and lobbying fees, as reasonably necessary to expedite the permit, license and other approval processes.

4.2 County Cooperation. In its proprietary capacity, the Department of Beaches and Harbors of the County of Los Angeles (the "Department") shall cooperate with and assist Lessee, to the extent reasonably requested by Lessee, in Lessee's efforts to obtain the appropriate governmental approvals, consents, permits or variances which

may be required in connection with the construction of the Redevelopment Work and, unless otherwise directed by Director, the construction of the Off-Site Parking Improvements described in Section 4.5(a) below. Such cooperative efforts may include the Department's joinder in any application for such approval, consent, permit or variance, where joinder therein by the Department is required or helpful (including without limitation, but only if approved by Director, co-application by County to eliminate or reduce the Parcel 147 replacement public parking spaces described in Section 4.4(b) hereof); provided, however, that Lessee shall reimburse County for the Actual Costs (as defined in the Restated Lease) incurred by the Department in connection with such joinder or cooperative efforts as to the Redevelopment Work (but not as to the Off-Site Parking Improvements). Notwithstanding the foregoing, Lessee and County acknowledge that the approvals given by County under this Agreement and/or the Restated Lease shall be approvals pursuant to its authority under Sections 25536 and 25907 of the California Government Code and given in its proprietary capacity; that approvals given under this Agreement and/or the Restated Lease in no way release Lessee from obtaining, at Lessee's expense, all permits, licenses and other approvals required by law for the construction of the Redevelopment Work and operation and other use of the Premises; and that the Department's duty to cooperate and County's approvals under this Agreement and/or the Restated Lease do not in any modify or limit the exercise of County's governmental functions or decisions as distinct from its proprietary functions pursuant to this Agreement and/or the Restated Lease.

**4.3 Plans and Specifications for Redevelopment Work.** The Redevelopment Work shall be constructed by Lessee in accordance with and subject to the terms and provisions of Article 5 of the Restated Lease. The requirements of Article 5 of the Lease include, without limitation, the obligation of Lessee to prepare and submit to the Director for the Director's approval certain plans, specifications, construction cost estimates and other materials pertaining to the Redevelopment Work, as set forth in more detail in Sections 5.2 through 5.4 of the Restated Lease. The schedule for the preparation, submittal and approval of such plans, specifications, construction cost estimates and other materials shall generally proceed in accordance with the terms and provisions of the Restated Lease. Notwithstanding the foregoing, during the period commencing on the date of this Agreement and expiring on the earlier of Lessee's exercise of the Option or the Option Expiration Date, Lessee shall prepare and submit to Director for Director's approval, those portions of the plans, specifications and other materials described in Sections 5.2 through 5.4 of the Restated Lease which are required to be submitted to governmental authorities (including the County and the California Coastal Commission) in connection with Lessee's applications for and/or receipt of all Entitlements for the Redevelopment Work. Lessee shall accompany such plans, specifications and other materials with the construction cost estimates described in such Sections 5.2 through 5.4, as applicable. The standards and time periods for Director's review and approval of the materials submitted by Lessee pursuant to this Section 4.3 shall be in accordance with the terms and provisions of Sections 5.2 through 5.4 of the Restated Lease, which terms and provisions are hereby incorporated into this Agreement by reference. Such plans, specifications and other materials shall be prepared and submitted to Director by Lessee in accordance with a schedule which shall facilitate Lessee's satisfaction of all conditions precedent to the exercise of the Option on or before the Option Expiration Date (as the same may be extended pursuant to the terms hereof).

#### 4.4 Parking.

(a) Relocation of Parcel 20 Anchorage Parking. Certain property located adjacent to the Premises and commonly known as Parcel 20 is currently leased by County to Lessee's affiliate, Panay Way Marina, L.P. (with its successors and assigns, the "Parcel 20 Lessee"). If Lessee exercises the Option, the Parking Structure to be constructed on the Premises by Lessee as a part of the Redevelopment Work is contemplated to include 112 parking spaces to facilitate the relocation to the Parking Structure of the parking facilities for the Parcel 20 anchorage improvements. Section 15.20.2 of the Restated Lease provides for the reservation of an easement in favor of Parcel 20 for the use of such spaces. Lessee, the Parcel 20 Lessee and County shall cooperate to seek any and all governmental approvals (if any) required for the relocation of the parking facilities for the Parcel 20 anchorage improvements from Parcel 20 to the Parking Structure upon the completion of the construction thereof. A condition to the exercise by Lessee of the Option shall be the receipt of any such required governmental approvals.

(b) Parcel 147 Replacement Parking. Concurrent or substantially concurrent herewith, County has entered into a Lease Option Agreement (the "Parcel 147 Option Agreement") with Lessee's affiliate, MDR Oceana, LLC (with its successors and assigns, the "Parcel 147 Lessee") pursuant to which County has granted the Parcel 147 Lessee an option (the "Parcel 147 Option") to enter into a lease with County (the "Parcel 147 Lease") for certain property commonly known as Parcel 147. The exercise by the Parcel 147 Lessee of the Parcel 147 Option is conditioned upon Lessee's agreement to provide 94 replacement public parking spaces in the Parking Structure to be located on the Premises to replace 94 public parking spaces currently located on Parcel 147 that are being displaced in connection with the development of Parcel 147.

#### 4.5 Lessee Cooperation With Regard to Other Projects.

(a) The Restated Lease provides for the termination of the Restated Lease with respect to a portion of the Premises described in Section 2.2 of the Restated Lease as the "Partial Termination Premises" as of the "Partial Termination Date" (as defined in Section 2.2 of the Restated Lease). One of the potential uses being considered by County for the Partial Termination Premises is for additional off-site replacement public parking facilities. It is contemplated that such additional off-site parking might be developed, at least in part, to satisfy requirements that may arise in connection with the development of other projects in Marina del Rey, including without limitation, those contemplated for Parcels 10/FF, 33/NR and IR. If requested by Director, concurrent with Lessee's pursuit of the Entitlements for the construction of the Redevelopment Work, Lessee shall also, jointly with County, pursue the governmental approvals and entitlements required for the performance of the Parking Lot Work described in Section 2.2 of the Restated Lease. In all events, Lessee agrees to use its commercially reasonable efforts (at no cost to Lessee) to cooperate with any efforts of County to obtain governmental approvals and entitlements for County's use of the Partial Termination Premises and neither Lessee nor any of its affiliates shall object or take any action to interfere with County's efforts to obtain governmental approvals and entitlements for the use of the Partial Termination Premises for replacement public parking or other parking purposes designated by County. Lessee's obligations under this Section 4.5(a) shall expressly survive the exercise of the



Option by Lessee and shall be deemed to be incorporated into the Restated Lease as a covenant that is binding on Lessee thereunder.

(b) County is considering the development of a new Department headquarters facility on certain portions of Parcel 20 on which an existing commercial building and related improvements are currently located. If County determines to proceed with the development of such headquarters facility, then Lessee agrees to use commercially reasonable efforts (at no cost to Lessee) to cooperate with County's efforts to obtain governmental approvals and entitlements for the construction of such headquarters facility, and neither Lessee nor any of its affiliates shall object or take any action to interfere with the development of such headquarters facility. The Lessee's obligations under this Section 4.5(b) shall expressly survive the exercise of the Option by Lessee and shall be deemed to be incorporated into the Restated Lease as a covenant that is binding on Lessee thereunder.

5. Alternative Lease Amendment. If Lessee does not exercise the Option on or before the Option Expiration Date (or the Option is not exercisable by the Option Expiration Date), then (i) the Option shall be automatically terminated, and (ii) within forty-five (45) days following the Option Expiration Date County and Lessee shall execute and deliver an amendment to the Existing Lease (the "Non-Exercise Amendment"), which amendment shall amend the Existing Lease as follows:

(a) amend and restate Sections 11 through 15 of the Existing Lease in accordance with all of the terms and provisions of Sections 4.1 through 4.5 of the Restated Lease, except that:

(i) Subsection 4.2.1 of the Restated Lease shall be modified to read as follows:

"Lessee shall pay to County the minimum rent described in this subsection 4.2.1 (subject to adjustment pursuant to Sections 4.3 and 4.4 below) during each year of the Term (the "Annual Minimum Rent"). Annual Minimum Rent shall be payable by Lessee to County on a monthly basis in equal installments of one-twelfth (1/12th) of the Annual Minimum Rent (the "Monthly Minimum Rent"), except that any amounts payable for less than a full calendar year or month shall be prorated based on the number of days in such partial year or month as compared to the total number of days in the full calendar year or month during which such period occurs. For the three (3) year period commencing with the Effective Date, the Annual Minimum Rent shall be equal to seventy-five percent (75%) of the average total annual rent or other charges (including, without limitation, minimum rent and percentage rent) that was payable by Lessee to County under the Existing Lease for the three (3) year period immediately preceding the Effective Date. From and after the third anniversary of the Effective Date, the Annual Minimum Rent shall be as set forth in Sections 4.3 and 4.4 below."

(ii) Section 4.3 of the Restated Lease shall be modified to read as follows:

“As of the third (3rd) anniversary of the Effective Date (the “First Adjustment Date”) and as of each third (3rd) anniversary of the First Adjustment Date thereafter (each an “Adjustment Date” and collectively the “Adjustment Dates”), the Annual Minimum Rent shall be adjusted. Until the Renegotiation Date provided in Section 4.4 hereof, the Annual Minimum Rent shall be adjusted as of each Adjustment Date to the amount which equals seventy five percent (75%) of the average of the scheduled total annual rent due (including Monthly Minimum Rent and Percentage Rent) from Lessee to County under Section 4.2 of this Lease during the thirty-six (36) month period immediately preceding the Adjustment Date.”

(iii) The first paragraph of Section 4.4 of the Restated Lease shall be modified to read as follows:

“Effective on each tenth (10th) anniversary of the Effective Date (each a “Renegotiation Date” and collectively, the “Renegotiation Dates”), the Annual Minimum Rent and Percentage Rent shall be readjusted to the Fair Market Rental Value (as defined below) of the Premises.”

(b) add Article 16 of the Restated Lease to the Existing Lease;

(c) amend and restate Section 7 of the Existing Lease in accordance with Article 7 of the Restated Lease;

(d) amend and restate Sections 8 and 10 of the Existing Lease in accordance with Sections 5.2 through 5.12 of the Restated Lease, except that (i) all references to the Redevelopment Work shall mean and refer to future Improvements or alterations that Lessee desires to make to the Existing Premises, and (ii) all references to any schedule for the commencement or completion of the Redevelopment Work shall be deleted;

(e) amend and restate Section 18 of the Existing Lease in accordance with Sections 2.3 and 2.4 of the Restated Lease;

(f) amend and restate Sections 22A and 22C of the Existing Lease in accordance with Sections 11.1, 11.2 (excepting subsections 11.2.4 and 11.2.5) and 11.3 of the Restated Lease;

(g) amend Section 26 of the Existing Lease to adjust the amount and scope of commercial general liability, automobile liability, garagekeeper's legal liability, workers compensation and employer's liability insurance coverage required to be carried by Lessee to equal the amounts and coverages set forth in subsections 9.1.1, 9.1.2 and 9.1.3 of the Restated Lease, and to add to Section 26 of the Existing Lease the provisions of Section 9.6 of the Restated Lease;

(h) amend and restate Sections 30, 31 and 32 of the Existing Lease in accordance with Article 14 of the Restated Lease;

(i) add to the Existing Lease the provisions of Section 10.2 of the Restated Lease; and

(j) incorporate into the Existing Lease the definitions of capitalized terms used in the Restated Lease to the extent such terms are used in the Non-Exercise Amendment pursuant to clauses (a) through (i) above.

For purposes of the Non-Exercise Amendment, all references in the Restated Lease to the "Effective Date" shall mean and refer to the date of the execution and delivery of the Non-Exercise Amendment, but not later than forty-five (45) days following the Option Expiration Date.

6. County Costs. Regardless of whether Lessee exercises the Option, Lessee shall promptly reimburse County for the Actual Costs (as defined in the Restated Lease) incurred by County in the review, negotiation, preparation and documentation of the Restated Lease, the Non-Exercise Amendment, this Agreement and the term sheets and memoranda that preceded the foregoing. The parties acknowledge that Lessee has deposited the sum of Ninety Thousand Dollars (\$90,000.00) toward those costs. County shall deliver to Lessee an initial report detailing such expenditures within ninety (90) days after the date of this Agreement. County shall thereafter deliver supplemental reports to Lessee for costs, if any, incurred subsequent to the initial report.

7. Miscellaneous.

7.1 Time is of the Essence. Time is of the essence of this Agreement, including, without limitation, with respect to all times, restrictions, conditions and limitations set forth herein.

7.2 Waivers. Except as stated in writing by the waiving party, any waiver by either party of any breach of any one or more of the covenants, conditions, terms or provisions of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or of any other covenant, condition, term or provision of this Agreement, nor shall failure on the part of either party to require exact, full and complete compliance with any of the covenants, conditions, terms or provisions of this Agreement be construed to in any manner change the terms hereof or estop that party from enforcing the full provisions hereof.

7.3 Notices. All notices required or permitted to be given under this Agreement shall be given in accordance with the terms and provisions of Section 15.10 of the Restated Lease.

7.4 Captions. The captions contained in this Agreement are for informational purposes only, and are not to be used to interpret or explain the particular provisions of this Agreement.

7.5 Attorneys' Fees. In the event of any action, proceeding or arbitration arising out of or in connection with this Agreement, whether or not pursued to judgment, the prevailing party shall be entitled, in addition to all other relief, to recover its costs and reasonable attorneys' fees, including without limitation, attorneys' fees for County Counsel's services where County is represented by the County Counsel and is the prevailing party.

7.6 No Assignment. Lessee shall have no right to assign or transfer its rights or obligations under this Agreement to any other person or entity, without the express written consent of County, which consent may be withheld by County in its sole and absolute discretion.

7.7 Entire Agreement. This Agreement sets forth the full and complete understanding of the parties relating to the subject matter hereof, and supercedes any and all agreements, understandings and representations made prior hereto with respect to such matters.

7.8 Joint Effort. Preparation of this Agreement has been a joint effort of the parties, and the resulting document shall not be construed more severely against one of the parties than against the other.

7.9 Applicable Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

7.10 Counterparts. This Agreement may be signed in any number of counterparts. Each counterpart shall represent an original of this Agreement and all such counterparts shall collectively constitute one fully-executed document.

7.11 Successors and Assigns. Subject to Section 7.6 above, the rights and obligations of the parties under this Agreement shall be binding upon the parties' respective successors and assigns.

7.12 Exhibits. Exhibits A and B attached to this Agreement are hereby expressly incorporated herein by reference.

7.13 Existing Encumbrances. Lessee represents and warrants that there are no deeds of trust, mortgages or other security interests that encumber Lessee's interest in the Existing Lease or the Existing Premises except as disclosed in the Lender's Consent attached hereto, and that except for partnership consents that have been obtained by Lessee, no consent is required from any other person or entity as a condition to the effectiveness of this Agreement against Lessee and its interest in the Existing Lease and Existing Premises.

SIGNATURES ON FOLLOWING PAGE

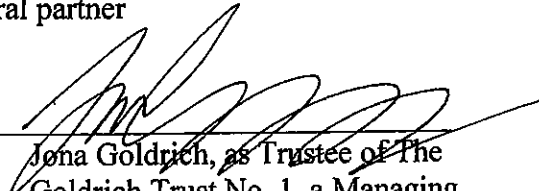
IN WITNESS WHEREOF, County and Lessee have entered into this Agreement as of the day and year first written above.

THE COUNTY OF LOS ANGELES

By: \_\_\_\_\_  
Chair, Board of Supervisors

HOLIDAY-PANAY WAY MARINA, L.P.,  
a California limited partnership

By: GKB Development Co., LLC, a  
California limited liability company, a  
general partner

By:  \_\_\_\_\_  
Jona Goldrich, as Trustee of The  
Goldrich Trust No. 1, a Managing  
Member

ATTEST:

SACHI HAMAI,  
Executive Officer of the Board of  
Supervisors

By: \_\_\_\_\_  
Deputy

APPROVED AS TO FORM:

RAYMOND G. FORTNER, JR.,  
OFFICE OF COUNTY COUNSEL

By: \_\_\_\_\_  
Deputy

APPROVED AS TO FORM:

MUNGER, TOLLES & OLSON LLP

By: \_\_\_\_\_

**LENDER CONSENT**

The undersigned represents that it is the current beneficiary under that certain Deed of Trust With Assignment of Rents dated September 30, 1999, originally granted to Holiday Marinas, Inc., and recorded in the Official Records of Los Angeles County, California on October 1, 1999 as Instrument No. 99-187427 (the "Deed of Trust"), as assigned to the undersigned by Assignment of Deed of Trust dated January 31, 2001 and recorded in the Official Records of Los Angeles County, California as Instrument No. 01-0199678. As such current beneficiary the undersigned hereby consents to the foregoing Option to Amend Lease Agreement and agrees that the Deed of Trust is subject and subordinate to such Option to Amend Lease Agreement.

OVERLAND FINANCIAL COMPANY  
LLC, a California limited liability company

By: \_\_\_\_\_

Jona Goldrich, Manager

**AMENDED AND RESTATED LEASE AGREEMENT**

by and between

County of Los Angeles

and

Holiday-Panay Way Marina, L.P.

(Parcel 21--Lease No. \_\_\_\_\_)

Dated as of \_\_\_\_\_

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**AMENDED AND RESTATED LEASE AGREEMENT  
PARCEL 21--MARINA DEL REY**

THIS AMENDED AND RESTATED LEASE AGREEMENT ("Lease") is made and entered into as of \_\_\_\_\_, \_\_\_\_ ("Effective Date"), by and between the COUNTY OF LOS ANGELES ("County"), and HOLIDAY-PANAY WAY MARINA, L.P., a California limited partnership (together with its permitted successors and assigns, "Lessee").

WITNESSETH

WHEREAS, the parties hereto or their predecessors in interest, entered into Lease No. 11210 dated September 27, 1966 (as amended prior hereto, the "Original Lease") whereby Lessee leases from County that certain real property in the Marina del Rey Small Craft Harbor commonly known as Parcel No. 21 ("Existing Premises"), the term of which commenced on September 1, 1966 and currently extends through August 31, 2026 (the "Original Term"); and

WHEREAS, County and Lessee have entered into that certain Option to Amend Lease Agreement dated January \_\_, 2008 (the "Option Agreement"), pursuant to which County granted Lessee an option (the "Option") to amend and restate the Original Lease in its entirety, upon the terms and conditions more specifically provided herein, including, without limitation, an extension of the term through August 31, 2065 and an expansion of the Existing Premises to include certain additional adjacent water area (the "Additional Premises"); and

WHEREAS, Lessee has exercised the Option in accordance with the terms and provisions of the Option Agreement.

NOW, THEREFORE, in reliance on the foregoing and in consideration of the mutual covenants, agreements and conditions set forth herein, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto and each of them do agree as follows:

1. BACKGROUND AND GENERAL.

1.1 Definitions. The defined terms in this Lease shall have the meanings as follows:

1.1.1. "ACCOUNTING YEAR" shall have the meaning set forth in Section 14.7.

1.1.2. "ACTUAL COST" shall mean the reasonable cost and expenses incurred by County with respect to a particular activity or procedure, including without limitation (i) expenditures to third party legal counsel, financial consultants and advisors, (ii) costs incurred in connection with appraisals, and (iii) County's internal overhead and administrative costs, which include without limitation the value of services provided by County's in-house counsel, lease administrators and/or lease auditors and other County administrative staff below the level of deputy director (the administrative level which is two levels below the County department head).

1.1.3. "ADA" shall have the meaning set forth in Section 1.2.

1.1.4. "ADDITIONAL PARCEL 20 PARKING SPACES" shall have the meaning set forth in subsection 15.20.1.

1.1.5. "ADDITIONAL PREMISES" shall have the meaning set forth in the second recital of this Lease.

1.1.6. "ADJUSTMENT DATES" shall have the meaning set forth in Section 4.3.

1.1.7. "ADMINISTRATIVE CHARGE" shall have the meaning set forth in Section 4.6.

1.1.8. "AGGREGATE TRANSFER" shall have the meaning set forth in subsection 4.6.3.

1.1.9. "ANCHORAGE IMPROVEMENTS" shall have the meaning set forth in Section 5.1.

1.1.10. "ANNUAL MINIMUM RENT" shall have the meaning set forth in subsection 4.2.1.

1.1.11. "APPLICABLE LAWS" shall have the meaning set forth in subsection 1.2.1.

1.1.12. "APPLICABLE RATE" shall mean an annually compounded rate of interest equal to the lesser of (a) ten percent (10%) per annum or (b) the Prime Rate, as defined in subsection 4.4.6, plus three percent (3%) per annum; however, the Applicable Rate shall in no event exceed the maximum rate of interest which may be charged pursuant to Applicable Laws. In the event that the Applicable Rate as determined by the first sentence of this definition exceeds such maximum rate of interest, then the Applicable Rate shall be deemed the maximum rate permissible under Applicable Laws notwithstanding the first sentence of this definition.

1.1.13. "APPROVED SLIP LEASE" shall have the meaning set forth in subsection 11.1.2.

1.1.14. "APPROVED FINAL PLANS, SPECIFICATIONS AND COSTS" shall have the meaning set forth in subsection 5.5.1.

1.1.15. "ASSIGNMENT STANDARDS" shall have the meaning set forth in Section 11.2.

1.1.16. "AUDITOR-CONTROLLER" shall mean the Auditor-Controller of the County of Los Angeles, California.

1.1.17. "AWARD" shall have the meaning set forth in subsection 6.1.3.

1.1.18. "BASE VALUE" shall have the meaning set forth in subsection 4.8.1.1.

1.1.19. "BENEFICIAL INTEREST" shall have the meaning set forth in subsection 4.6.4.

1.1.20. "BOARD" shall mean the Board of Supervisors for the County of Los Angeles.

1.1.21. "BUSINESS DAY" shall have the meaning set forth in Section 17.3.

1.1.22. "CALCULATION NOTICE" shall have the meaning set forth in Section 4.7.

1.1.23. "CAPITAL IMPROVEMENT FUND" shall have the meaning set forth in Section 5.13.

1.1.24. "CHANGE OF OWNERSHIP" shall have the meaning set forth in subsection 4.6.1.

1.1.25. "CHANGE OF CONTROL" shall have the meaning set forth in subsection 4.6.1.

1.1.26. "CITY" shall mean the City of Los Angeles, California.

1.1.27. "COMPLETION DATE" shall mean the date of receipt of the first Temporary Certificate of Occupancy or other applicable governmental permit, certificate or approval for the legal occupancy of any of the Improvements constructed on the Premises as part of the Redevelopment Work pursuant to Article 5 of this Lease.

1.1.28. "CONDEMNATION" shall have the meaning set forth in subsection 6.1.1.

1.1.29. "CONDEMNOR" shall have the meaning set forth in subsection 6.1.4.

1.1.30. "CONSUMER PRICE INDEX" shall mean the Consumer Price Index--All Urban Consumers for Los Angeles/Riverside/Orange Counties, as published from time to time by the United States Department of Labor or, in the event such index is no longer published or otherwise available, such replacement index as may be agreed upon by County and Lessee.

1.1.31. "COUNTY" shall have the meaning set forth in the first paragraph of this Lease.

1.1.32. "COUNTY OPTION" shall have the meaning set forth in subsection 11.2.4.

1.1.33. "COUNTY OPTION PRICE" shall have the meaning set forth in subsection 11.2.4.

1.1.34. "COUNTY POOL RATE" shall have the meaning set forth in subsection 4.4.5 of this Lease.

1.1.35. "DATE OF TAKING" shall have the meaning set forth in subsection 6.1.2.

1.1.36. "DEPARTMENT" shall mean the Department of Beaches and Harbors of the County of Los Angeles.

1.1.37. "DESIGNEES" shall have the meaning set forth in subsection 15.20.2.

1.1.38. "DIRECTOR" shall mean the Director of the Department of Beaches and Harbors of the County of Los Angeles or any successor County officer responsible for the administration of this Lease.

1.1.39. "DISQUALIFICATION JUDGMENT" shall have the meaning set forth in subsection 16.15.1.

1.1.40. "DOCUMENTED TRANSACTION COSTS" shall have the meaning set forth in subsection 4.8.1.2.

1.1.41. "EFFECTIVE DATE" shall mean the date set forth in the first preamble paragraph of this Lease.

1.1.42. "ENCUMBRANCE" shall have the meaning set forth in subsection 12.1.1.

1.1.43. "ENCUMBRANCE HOLDER" shall have the meaning set forth in subsection 12.1.1.

1.1.44. "ENR INDEX" shall mean the Engineering News Record (ENR) Construction Cost Index for the Los Angeles Area, or such substitute index as the parties may mutually agree upon if such index is no longer published or otherwise available.

1.1.45. "ENTITLEMENTS" shall mean all entitlements, permits, licenses and other approvals required to be obtained from governmental authorities (including County and the California Coastal Commission) for the construction of the Redevelopment Work.

1.1.46. "EQUITY ENCUMBRANCE HOLDER" shall have the meaning set forth in subsection 12.1.1.

1.1.47. "EQUITY FORECLOSURE TRANSFEREE" shall have the meaning set forth in subsection 12.2.1.

1.1.48. "EVENTS OF DEFAULT" shall have the meaning set forth in Section 13.1.

1.1.49. "EXCESS PERCENTAGE RENT PAYMENT" shall have the meaning set forth in subsection 4.2.2.4.

1.1.50. "EXECUTION DATE" shall mean the date of execution of this Lease by County.

1.1.51. "EXCLUDED DEFAULTS" shall have the meaning set forth in subsection 12.3.3.

1.1.52. "EXISTING PREMISES" shall have the meaning set forth in the first recital to this Lease.

1.1.53. "EXTENDED TIME" shall have the meaning set forth in Section 15.15.

1.1.54. "FAIR MARKET RENTAL VALUE" shall have the meaning set forth in subsection 4.4.1.

1.1.55. "FINANCING EVENT" shall have the meaning set forth in Section 12.1.1.

1.1.56. "FIRST ADJUSTMENT DATE" shall have the meaning set forth in Section 4.3.

1.1.57. "FORCE MAJEURE" shall have the meaning set forth in subsection 5.7.3.4.

1.1.58. "FORECLOSURE TRANSFER" shall have the meaning set forth in subsection 12.2.1.

1.1.59. "FORECLOSURE TRANSFEREE" shall have the meaning set forth in subsection 12.2.1.

1.1.60. "GROSS ERROR" shall have the meaning set forth in subsection 16.15.4.

1.1.61. "GROSS RECEIPTS" shall have the meaning set forth in subsection 4.2.2.3.

1.1.62. "IMPROVEMENTS" means all buildings, structures, fixtures, docks, anchorage facilities, fences, fountains, walls, paving, parking areas, driveways, walkways, plazas, landscaping, permanently affixed utility systems and other improvements now or hereafter located on the Premises, including without limitation, the Redevelopment Work.

1.1.63. "IMPROVEMENT COSTS" shall have the meaning set forth in subsection 4.8.1.1.



1.1.64. "INCOME APPROACH" shall have the meaning set forth in Section 6.5.

1.1.65. "INITIATING PARTY" shall have the meaning set forth in the first paragraph of Article 16.

1.1.66. "INSTITUTIONAL LENDER" shall have the meaning set forth in subsection 12.3.1.

1.1.67. "INSURANCE RENEGOTIATION DATE" shall have the meaning set forth in Section 9.6.

1.1.68. "LATE FEE" shall have the meaning set forth in Section 4.5.

1.1.69. "LEASE" shall mean this Amended and Restated Lease Agreement.

1.1.70. "LEASE YEAR" shall have the meaning set forth in Section 2.1.

1.1.71. "LESSEE" shall have the meaning set forth in the first paragraph of this Lease.

1.1.72. "LESSEE SALE PRICE" shall have the meaning set forth in subsection 11.2.4.

1.1.73. "LETTER OF CREDIT" shall have the meaning set forth in Section 7.1.

1.1.74. "MAJOR SUBLEASE" shall have the meaning set forth in subsection 11.1.1.

1.1.75. "MAJOR SUBLESSEE" shall have the meaning set forth in subsection 11.1.1.

1.1.76. "MONTHLY MINIMUM RENT" shall have the meaning set forth in subsection 4.2.1.

1.1.77. "NET AWARDS AND PAYMENTS" shall have the meaning set forth in Section 6.7.

1.1.78. "NET PROCEEDS SHARE" shall have the meaning set forth in Section 4.6.

1.1.79. "NET REFINANCING PROCEEDS" shall have the meaning set forth in subsection 4.8.5.

1.1.80. "NET TRANSFER PROCEEDS" shall have the meanings set forth in subsections 4.8.1 and 4.8.2.

1.1.81. "NEW COMMERCIAL BUILDING" shall have the meaning set forth in Section 5.1.

1.1.82. "NOTICE OF COMPLETION" shall have the meaning set forth in subsection 5.7.7.

1.1.83. "ON-SITE PARKING SPACES" shall have the meaning set forth in subsection 15.20.1.

1.1.84. "OPERATION PLAN" shall have the meaning set forth in subsection 15.20.4.

1.1.85. "OPTION" shall have the meaning set forth in the preamble to this Lease.

1.1.86. "OPTION AGREEMENT" shall have the meaning set forth in the preamble to this Lease.

1.1.87. "ORIGINAL LEASE" shall have the meaning set forth in the preamble to this Lease.

1.1.88. "ORIGINAL TERM" shall have the meaning set forth in the preamble to this Lease.

1.1.89. "OWNERSHIP INTERESTS" shall have the meaning set forth in subsection 12.1.1.

1.1.90. "PARCEL 147" shall mean the property previously commonly known as Parking Lot 8 or Parcel OT, including the annexation of a portion of Parcel P, in the Marina del Rey Small Craft Harbor [and currently leased by County to Lessee's affiliate, MDR Oceana, LLC, a California limited liability company, pursuant to that certain Lease Agreement dated \_\_\_\_\_ (the "Parcel 147 Lease")].

1.1.91. "PARCEL 20" shall mean the property commonly known as Parcel 20 in the Marina del Rey Small Craft Harbor and currently leased by County to Lessee's affiliate, Panay Way Marina, L.P., a California limited partnership, pursuant to that certain Amended and Restated Lease Agreement dated September 9, 2004, as amended by that certain Amendment No. 12 to Amended and Restated Lease dated as of \_\_\_\_\_, 2007 (as so amended, the "Parcel 20 Lease").

1.1.92. "PARCEL 147 LESSEE" shall mean the lessee from time to time under the Parcel 147 Lease.

1.1.93. "PARCEL 20 LESSEE" shall mean the lessee from time to time under the Parcel 20 Lease, and any other lessee of Parcel 20 (or the portion of Parcel 20 on which the anchorage improvements are located) designated from time to time by County.

1.1.94. "PARKING STRUCTURE" shall have the meaning set forth in Section 5.1.

1.1.95. "PARTIAL TAKING" shall have the meaning set forth in Section 6.5.

1.1.96. "PARTIAL TERMINATION DATE" shall have the meaning set forth in Section 2.2.

1.1.97. "PARTIAL TERMINATION PREMISES" shall have the meaning set forth in Section 2.2.

1.1.98. "PAYMENT BOND" shall have the meaning set forth in subsection 5.5.4.2.

1.1.99. "PERCENTAGE RENT" shall have the meaning set forth in subsection 4.2.2.

1.1.100. "PERFORMANCE BOND" shall have the meaning set forth in subsection 5.5.4.1.

1.1.101. "PERMITTED CAPITAL EXPENDITURES" shall have the meaning set forth in Section 5.13.

1.1.102. "PERMITTED USES" shall have the meaning set forth in Section 3.1.

1.1.103. "PREMISES" shall mean the Existing Premises and the Additional Premises, as more specifically described in Exhibit A hereto.

1.1.104. "PRIME RATE" shall have the meaning set forth in subsection 4.4.5.

1.1.105. "PROMENADE WORK" shall have the meaning set forth in Section 15.19.

1.1.106. "PROPOSED TRANSFER" shall have the meaning set forth in subsection 11.2.4.

1.1.107. "PUBLIC SERVICE PLAN" shall have the meaning set forth in subsection 4.2.2(t).

1.1.108. "PUBLIC WORKS DIRECTOR" shall mean the Director of the Department of Public Works of the County of Los Angeles.

1.1.109. "PURCHASE MONEY NOTE" shall have the meaning set forth in subsection 4.7.2.

1.1.110. "REDEVELOPMENT WORK" shall have the meaning set forth in Section 5.1.

1.1.111. "RENEGOTIATION DATES" shall have the meaning set forth in Section 4.4.

1.1.112. "RENOVATION FUND" shall have the meaning set forth in Section 5.15.

1.1.113. "RENOVATION PLAN" shall have the meaning set forth in Section 5.15.

1.1.114. "RENOVATION REQUIREMENT" shall have the meaning set forth in Section 5.15.

1.1.115. "REPLACEMENT PARCEL 147 PARKING SPACES" shall have the meaning set forth in subsection 15.20.1.

1.1.116. "REPLY" shall have the meaning set forth in Section 16.5.

1.1.117. "RESPONDING PARTY" shall have the meaning set forth in the first paragraph of Article 16.

1.1.118. "REQUIRED COMPLETION DATE" shall have the meaning set forth in Section 5.7.

1.1.119. "SECTION" shall mean a Section of this Lease.

1.1.120. "SECURITY DEPOSIT" shall have the meaning set forth in Section 7.1.

1.1.121. "SHALL" and "WILL" are mandatory and the word "MAY" is permissive.

1.1.122. "STATE" shall mean the State of California.

1.1.123. "STATEMENT OF POSITION" shall have the meaning set forth in subsection 16.6.

1.1.124. "SUBLEASE" shall have the meaning set forth in subsection 11.1.1.

1.1.125. "SUBLESSEE" shall have the meaning set forth in subsection 11.1.1.

1.1.126. "SUBSECTION" shall mean a subsection of a Section of this Lease.

1.1.127. "SUBSTANTIAL COMMENCEMENT OF CONSTRUCTION" shall have the meaning set forth in subsection 5.7.1.

1.1.128. "TERM" shall have the meaning set forth in Section 2.1.

1.1.129. "TIME OF THE ESSENCE" shall have the meaning set forth in Section 15.2.

1.1.130. "UNINSURED LOSS" shall have the meaning set forth in Section 10.2.

1.1.131. "UNREASONABLE COUNTY ACT" shall have the meaning set forth in subsection 5.7.3.2.

1.1.132. "WRITTEN APPRAISAL EVIDENCE" shall have the meaning set forth in subsection 16.7.

1.2 Lease. For and in consideration of the payment of rentals and the performance of all the covenants and conditions of this Lease, County hereby leases to Lessee, and Lessee hereby leases and hires from County, an exclusive right to possess and use, as tenant, the Premises for the Term (as hereinafter defined) and upon the terms and conditions and subject to the requirements set forth herein.

1.2.1. As-Is. Lessee acknowledges that (1) it is currently in possession of the Existing Premises, (2) Lessee or its predecessors-in-interest have continuously occupied and/or managed and operated the Existing Premises since 1966, and (3) the Improvements now existing on the Existing Premises were constructed by Lessee or its predecessors with contractors selected by them. Except as provided in subsection 1.2.2, Lessee accepts the Premises in their present condition notwithstanding the fact that there may be certain defects in the Premises, whether or not known to either party to this Lease, at the time of the Effective Date and Lessee hereby represents that it has performed all investigations necessary, including without limitation soils and engineering inspections, in connection with its acceptance of the Premises "AS IS WITH ALL FAULTS". Lessee hereby accepts the Premises on an "AS IS WITH ALL FAULTS" basis and, except as expressly set forth in this Lease, Lessee is not relying on any representation or warranty of any kind whatsoever, express or implied, from County or any other governmental authority or public agency, or their respective agents or employees, as to any matters concerning the Premises and/or any Improvements located thereon, including without limitation: (i) the quality, nature, adequacy and physical condition and aspects of the Premises and/or any Improvements located thereon, including, but not limited to, the structural elements, foundation, roof, protections against ocean damage, erosion, appurtenances, access, landscaping, parking facilities and the electrical, mechanical, HVAC, plumbing, sewage and utility systems, facilities and appliances, and the square footage of the land and within the Improvements and within each space therein, (ii) the quality, nature, adequacy and physical condition of soils, geology and any groundwater, (iii) the existence, quality, nature, adequacy and physical condition of utilities serving the Premises and/or any Improvements located thereon, (iv) the development potential of the Premises, and the use, habitability, merchantability or fitness, or the suitability, value or adequacy of the Premises and/or any Improvements located thereon for any particular purpose, (v) the zoning or other legal status or entitlement or lack thereof of the Premises or any other public or private restrictions on use of the Premises, (vi) the compliance of the Premises and/or any Improvements located thereon with any applicable codes, laws, rules, regulations, statutes, resolutions, ordinances, covenants, conditions and restrictions of County, City, State, the United States of America, the California Coastal Commission and/or any other governmental or quasi-governmental entity ("Applicable Laws") or of any other person or entity

(including, without limitation, relevant provisions of the Americans with Disabilities Act ("ADA"), (vii) the presence of any underground storage tank or hazardous materials on, under or about the Premises or the adjoining or neighboring property, (viii) the quality of any labor and materials used in any Improvements, (ix) the condition of title to the Premises, and (x) the economics of the operation of the Premises and/or any Improvements located thereon.

1.2.2. Title. County represents that County owns fee title to the Premises and that County has authority to enter into this Lease. Lessee hereby acknowledges the title of County and/or any other public entity or agency having jurisdiction thereover, in and to the Premises, and covenants and agrees never to contest or challenge the extent of said title, except as is necessary to ensure that Lessee may occupy the Premises pursuant to the terms and conditions of this Lease.

## 2. TERM.

2.1 Term. The term of the Lease ("Term") for the Existing Premises commenced on September 1, 1966. The Term for the Additional Premises shall commence on the Effective Date set forth herein. Unless terminated sooner in accordance with the provisions of this Lease, the Term shall expire at 11:59 p.m. on August 31, 2065. Each calendar year during the Term is referred to herein as a "Lease Year."

2.2 Partial Lease Termination. Effective upon the Partial Termination Date (as defined below), this Lease shall be terminated with respect to the westerly approximately 207 feet of the Premises (excluding the Promenade) as more particularly described on Exhibit A-1 attached to this Lease (the "Partial Termination Premises"). For purposes hereof, the "Partial Termination Date" means the earlier of (a) six (6) months following the issuance of the first certificate of occupancy for any portion of the "Development Work" described in the Parcel 147 Lease; or (b) six (6) months following the "Required Completion Date" under the Parcel 147 Lease.

On or prior to the Partial Termination Date, Lessee shall (i) at Lessee's sole cost and expense, demolish and remove from the Partial Termination Premises all then-existing above and below-ground Improvements located on the Partial Termination Premises and construct a new surface parking lot (including without limitation, any required site work, paving, striping and lighting) on the Partial Termination Premises in accordance with plans and specifications provided by the Department (the "Parking Lot Work"), and (ii) surrender possession of the Partial Termination Premises to County. County agrees to use commercially reasonable efforts to cooperate with Lessee in the grant or reservation of any utility easements over the Partial Termination Premises required for the development of the remaining portion of the Premises as long as such utility easements do not interfere with the development and use of the Partial Termination Premises. If Lessee fails to perform its obligations under this Section 2.2 within the time periods required hereunder (subject to Force Majeure, as hereinafter defined, and subject to any applicable notice and cure periods), then such failure shall constitute a default by Lessee under this Lease, and in addition to any other rights or remedies that County may have in connection with such default, County shall have the right, but not the obligation, to exercise one or both of the following remedies: (I) to delay the Partial Termination Date until any date

selected by County on or prior to the date of the completion of the Parking Lot Work, or (II) to perform the Parking Lot Work on Lessee's behalf, in which case Lessee shall be obligated under this Lease to pay to County the Actual Cost incurred by County in connection with the performance of the Parking Lot Work. No termination of the Lease with respect to the Partial Termination Premises shall release or relieve Lessee from its obligations under this Section 2.2, all of which shall survive any such termination. Subject to the immediately preceding sentence, effective on the Partial Termination Date the Term of the Lease shall expire with respect to the Partial Termination Premises and Lessee shall have no further rights or interests in the Partial Termination Premises (except as otherwise expressly provided herein). Subject to the performance of Lessee's obligations under this Section 2.2, Lessee shall continue to have all of its rights under this Lease with respect to the Partial Termination Premises (including without limitation, the right to use and occupy the Partial Termination Premises) until the Partial Termination Date.

At County's request, Lessee shall execute an amendment to this Lease and a quitclaim deed with respect to the Partial Termination Premises, to confirm the termination of the Lease with respect to the Partial Termination Premises, and County and Lessee shall execute any other documents as reasonably necessary or appropriate to effectuate the termination of this Lease with respect to the Partial Termination Premises or the other matters set forth in this Section 2.2. Notwithstanding the foregoing, the termination of the Lease with respect to the Partial Termination Premises in accordance with the terms and provisions of this Section 2.2 shall not be conditioned upon the execution of any such amendment, quitclaim deed or other documentation. There shall be no adjustment to the Annual Minimum Rent or Percentage Rent payable under this Lease upon the termination of the Lease with respect to the Partial Termination Premises.

2.3 Ownership of Improvements During Term. Until the expiration of the Term or sooner termination of this Lease and except as specifically provided herein, Lessee shall own all Improvements now existing and constructed by Lessee or its predecessors or hereafter constructed by Lessee upon the Premises, and all alterations, additions, or betterments made thereto by Lessee.

2.4 Reversion of Improvements. Upon the expiration of the Term or sooner termination of this Lease, whether by cancellation, forfeiture or otherwise:

2.4.1. County's Election to Receive Improvements. At the election of County, all structures, buildings, Improvements and all alterations, additions, and betterments thereto, and all other Improvements made to or upon the Premises shall remain upon and be surrendered with the Premises as part thereof and title thereto shall vest in County without compensation therefor to Lessee. Nothing contained herein shall be construed to deny or abrogate the right of Lessee, prior to the expiration of the Term or termination of this Lease, to receive any and all proceeds which are attributable to the Condemnation of business installations, Improvements, structures and buildings belonging to Lessee immediately prior to the taking of possession by the Condemnor as said rights are set forth in Article 6 of this Lease, or to remove any furniture or equipment not intended to be permanently affixed to, or reasonably necessary for the operation of, the Premises, any signage identifying Lessee (as opposed to other signage used in the operation of the

Premises and associated Improvements), or any personal property, upon the expiration of the Term or earlier termination of this Lease or at any time during the Term, subject to Lessee's obligations under this Lease to use the Premises for the Permitted Uses.

2.4.2. Duty to Remove. No earlier than eleven (11) years, and no later than ten (10) years prior to the expiration of the Term, Lessee shall deliver to County a report prepared by a construction and demolition expert approved by County, such approval not to be unreasonably withheld or delayed, which report details and estimates the cost of removing all Improvements on the Premises at the expiration of the Term. County may give written notice at any time, no later than four (4) years prior to the expiration of the Term or concurrently upon any earlier termination, of County's election to require Lessee to remove, at the sole cost and expense of Lessee, not later than the expiration of the Term or earlier termination of this Lease, all or any portion of the at grade, above grade and below grade structures, buildings and Improvements of any kind whatsoever placed or maintained on the Premises, whether placed thereon or maintained by Lessee or others, including, but not limited to, concrete foundations, pilings, structures and buildings; and if such structures are required to be removed by Lessee, then Lessee shall, upon the expiration or termination of this Lease, immediately restore, and quit, and peacefully surrender possession of, the Premises to County in good, usable and buildable condition, consisting of a level, graded buildable pad with no excavations, hollows, hills or humps. If Lessee has received written notice of County's election to require Lessee to remove Improvements hereunder, Lessee shall, no later than the date which is ninety (90) days after the date upon which Lessee received such notice from County, provide County with a letter of credit, bond or other security or deposit of funds, in form, issuer and amount satisfactory to County, to secure the discharge of Lessee's removal and restoration obligations pursuant to this subsection. The amount of the letter of credit, bond or other security or deposit shall be equal to the greatest of (i) one hundred fifty percent (150%) of the estimated cost to remove the Improvements as set forth in the report described above (the "Estimated Costs"), (ii) the Estimated Costs adjusted to reflect the percentage change in the ENR Index over the five (5) year period immediately preceding the date of Lessee's delivery of the letter of credit, bond, or other security or deposit, or (iii) the Estimated Costs adjusted to reflect the percentage change in the CPI Index over the five (5) year period immediately preceding the date of Lessee's delivery of the letter of credit, bond, or other security or deposit. If by not later than four (4) years prior to the expiration of the Term (or concurrently on any earlier termination of the Lease by County) County fails to elect to require Lessee to remove the buildings, structures and Improvements on the Premises as provided above, then upon the expiration of the Term, or earlier termination of the Lease, Lessee shall turn over the Premises to County in good and workmanlike condition, consistent with the condition of other buildings, structures and Improvements of comparable age and construction quality.

2.4.3. County's Right to Remove Improvements. If, following an election by County to cause Lessee to remove the structures, buildings and Improvements as described in subsection 2.4.2 above, Lessee in fact fails to so remove said structures, buildings and Improvements and restore the Premises, County may sell, remove or demolish the same, in event of which sale, removal or demolition Lessee shall reimburse County for its Actual Costs incurred in connection with such sale, removal or demolition



in excess of any funds received by County through the security above provided and any consideration received by County as a result of such sale, removal or demolition.

2.4.4. Duty to Remove Equipment, Etc. No later than the expiration of the Term or sooner termination of this Lease, Lessee shall in any event remove at its cost and expense such furniture, equipment and personal property as are not firmly affixed to said structures, buildings and Improvements or reasonably necessary for the orderly operation of the Premises. Should Lessee fail to so remove said furniture, equipment and personal property within said period, and said failure continues for ten (10) days after written notice from County to Lessee, Lessee shall lose all right, title and interest in and thereto, and County may elect to keep the same upon the Premises or to sell, remove, or demolish the same, in event of which sale, removal, or demolition Lessee shall reimburse County for its Actual Costs incurred in connection with such sale, removal or demolition in excess of any consideration received by County as a result of said sale, removal or demolition.

2.4.5. Title to Certain Improvements Passes to County; Lessee to Maintain. As between County and Lessee, title to all utility lines, transformer vaults and all other utility facilities constructed or installed by Lessee upon the Premises shall vest in County upon construction or installation to the extent that they are not owned by a utility. Notwithstanding the foregoing sentence, such utility lines, transformer vaults and all other utility facilities, shall be maintained, repaired, and replaced, if and as needed, by Lessee during the Term.

### 3. USE OF PREMISES.

3.1 Specific Primary Use. The Premises shall be used by Lessee for the operation and management of (i) a commercial building used for retail, office, health club and yacht club purposes; (ii) boat anchorage facilities, including transient boat accommodations and liveaboards; (iii) a parking structure to (A) satisfy the parking requirements for the other Improvements located on the Premises, including the boat anchorage facilities, (B) provide 112 parking spaces to serve the boat anchorage facilities located on Parcel 20, and (C) provide 94 parking spaces as replacement public parking for public parking terminated on Parcel 147 in connection with the development of Parcel 147; and (iv) such other related and incidental uses as are specifically approved by County (collectively, the foregoing shall be referred to herein as the "Permitted Uses"). Except as specifically provided herein, the Premises shall be used for no other purpose without the prior written consent of County. County makes no representation or warranty regarding the continued legality of the Permitted Uses or any of them, and Lessee bears all risk of an adverse change in Applicable Laws.

Pacific Mariners Yacht Club and one or more other commercial tenants (the "Parcel 20 Commercial Subtenants") currently occupy the existing commercial building located on Parcel 20. Lessee agrees to offer to sublease to the Parcel 20 Commercial Subtenants a comparable amount of space in the New Commercial Building to facilitate the relocation of the Parcel 20 Commercial Subtenants to the New Commercial Building. The sublease offered to each of the Parcel 20 Commercial Subtenants shall be on market rate economic terms and conditions (but any non-economic terms and conditions, such as, but not limited to, liability and indemnification

provisions, may at Lessee's option be consistent with those set forth in the Parcel 20 Commercial Subtenants' current subleases existing as of the date hereof).

3.2 Prohibited Uses. Notwithstanding the foregoing:

3.2.1. Nuisance. Lessee shall not conduct or permit to be conducted any private or public nuisance on or about the Premises, nor commit any waste thereon. No rubbish, trash, waste, residue, brush, weeds or undergrowth or debris of any kind or character shall ever be placed or permitted to accumulate upon any portion of the Premises, except in appropriate receptacles intended for such purposes, nor shall any portion of the Premises be maintained so as to render said Premises a fire hazard or unsanitary, unsightly, offensive, or detrimental nor shall any similar activity be permitted on any other portion of the Premises or on any adjacent public street or adjacent property.

3.2.2. Restrictions and Prohibited Uses. Without expanding upon or enlarging the Permitted Uses of the Premises as set forth in this Lease, the following uses of the Premises are expressly prohibited:

3.2.2.1. The Premises shall not be used or developed in any way which is inconsistent with any applicable governmental or public agency requirements;

3.2.2.2. The Premises shall not be used or developed in any way in a manner inconsistent with the Permitted Uses. Without limiting the foregoing, no part of the Premises shall be used by any person for any adult entertainment purposes, as such term refers to graphic, explicit and/or obscene depictions of sexual activity;

3.2.2.3. No improvement on the Premises shall be permitted to fall into disrepair and all Improvements shall at all times be kept in good condition and repair consistent with the requirements of Section 10.1 of this Lease;

3.2.2.4. No condition shall be permitted to exist upon the Premises which shall induce, breed or harbor infectious plant diseases, rodents, or noxious insects and Lessee shall take such measures as are appropriate to prevent any conditions from existing on the Premises which create a danger to the health or safety of any persons residing or working at, or persons patronizing, the Premises;

3.2.2.5. Without the prior written approval of Director, no antennae or other device for the transmission or reception of television signals or any other form of electromagnetic radiation shall be erected, used or maintained by Lessee outdoors above ground on any portion of the Premises, whether attached to an improvement or otherwise;

3.2.2.6. No tools, equipment, or other structure designed for use in boring for water, oil, gas or other subterranean minerals or other substances, or designed for use in any mining operation or exploration, shall hereafter be erected or placed upon or adjacent to the Premises, except as is necessary to allow Lessee to perform its maintenance and repair obligations pursuant to this Lease;

3.2.2.7.No adverse environmental condition in violation of Applicable Laws shall be permitted to exist on any portion of the Premises, nor shall any toxic or hazardous wastes be permitted to be generated, treated, stored, disposed of, or otherwise deposited in or on or allowed to emanate from the Premises or any portion thereof, including, without limitation, into the surface waters and subsurface waters thereof; provided, however, that toxic or hazardous substances may be stored or used, so long as such storage and use is (a) ancillary to the ordinary course of business of an otherwise Permitted Use with the intent that such substances will be used in the ordinary course of business, and (b) conducted in compliance with all Applicable Laws; and

3.2.2.8.The following uses shall not be permitted: (a) fuel sales; (b) boat or vehicle repair, other than minor servicing or owner maintenance; (c) live bait sales; (d) commercial sportfishing and tour boats; or (e) residential use.

3.3 Active Public Use. The parties acknowledge that the ultimate objective of this Lease is the complete and continuous use of the facilities and amenities located in Marina del Rey by and for the benefit of the public, without discrimination as to race, gender or religion, along with the generation and realization of revenue therefrom. Accordingly, Lessee agrees and covenants that it will operate the Premises fully and continuously in light of these objectives, consistent with the operation of commercial, boat anchorage and parking facilities, and that it will use commercially reasonable efforts so that County may obtain maximum revenue therefrom as contemplated by this Lease. In the event of any dispute or controversy relating hereto, this Lease shall be construed with due regard to the aforementioned objectives.

3.4 Days of Operation. The Premises shall be open every day of the year. Any changes in the days and/or hours of operation of the public portions of the Premises shall be subject to the written approval of County.

3.5 Signs and Awnings. Any and all art, displays, identifications, monuments, awnings, advertising signs and banners which are placed on, or are visible from, the exterior of the Premises shall be only of such size, design, wording of signs and color as shall have been specifically submitted to and approved by Director (and to the extent required under then applicable Law, the Design Control Board), whether pursuant to Article 5 of this Lease or otherwise, in writing, prior to the erection or installation of said art, sign, display, identification, monument, awning or advertising sign.

3.6 Compliance with Regulations. Lessee shall comply with all Applicable Laws and shall pay for and maintain any and all licenses and permits related to or affecting the use, operation, maintenance, repair or improvement of the Premises.

3.7 Rules and Regulations. Lessee agrees to comply with such other reasonable rules and regulations governing the use and occupancy of the Premises as may be promulgated by County from time to time for general applicability on a non-discriminatory basis to other commercial, boat anchorage and parking facilities in Marina del Rey, and delivered in writing to Lessee.

3.8 Reservations. Lessee expressly agrees that this Lease and all rights hereunder shall be subject to all prior encumbrances, reservations, licenses, easements and rights of way existing as of the date hereof or otherwise referenced in this Lease in, to, over or affecting the Premises for any purpose whatsoever.

Without limiting the foregoing, Lessee expressly agrees that this Lease and all rights hereunder shall be subject to all prior matters of record and the right of County or City existing as of the Effective Date or otherwise disclosed to or known to Lessee, as their interests may appear, to install, construct, maintain, service and operate sanitary sewers, public roads and sidewalks, fire access roads, storm drains, drainage facilities, electric power lines, telephone lines and access and utility easements across, upon or under the Premises, together with the right of County or the City to convey such easements and transfer such rights to others.

The Lease of the Premises is also subject to the easements reserved in Sections 15.19 and 15.20 below.

3.9 Yacht Club Use. It is agreed and acknowledged by County and Lessee that a primary purpose of the yacht club use permitted under Section 3.1 above is to provide for a continuing and ongoing program in boating instruction and safety and to contribute to the pleasure of private boat ownership by participation in yachting regattas and similar competitive events. To that end, Lessee agrees and covenants to undertake and carry on and participate in those activities set forth on Exhibit C attached hereto, or such substitute activities as may be hereafter approved by Director.

An annual Public Service Plan shall be submitted by Lessee for Director's approval, on or prior to January 15 of each year, certifying that, and describing the manner in which, the requirements of this Section 3.9 have been satisfied by Lessee, together with Lessee's plans to meet such requirements in the current calendar year.

#### 4. PAYMENTS TO COUNTY.

4.1 Net Lease. The parties acknowledge that the payments to be made by Lessee under this Lease are intended to be absolutely net to County. The rent and other sums to be paid to County hereunder are not subject to any demand, set-off or other withholding. Except as specifically set forth herein, Lessee shall be solely responsible for all capital costs (including, without limitation, all structural and roof repairs or replacements) and operating expenses attributable to the operation and maintenance of the Premises, including without limitation the parking areas included within the Premises.

4.1.1. Utilities. In addition to the rental charges as herein provided, Lessee shall pay all utility and service charges for furnishing water, power, sewage disposal, light, telephone service, garbage and trash collection and all other utilities and services, to said Premises.

4.1.2. Taxes and Assessments. Lessee agrees to pay before delinquency all lawful taxes, assessments, fees, or charges which at any time may be levied by the State, County, City or any tax or assessment levying body upon any interest in this Lease or any possessory right which Lessee may have in or to the Premises covered hereby or to the

Improvements thereon for any reason, as well as all taxes, assessments, fees, and charges on goods, merchandise, fixtures, appliances, equipment, and property owned by it in, on or about the Premises. Lessee's obligation to pay taxes and assessments hereunder shall include but is not limited to the obligation to pay any taxes and/or assessments, or increases in taxes and/or assessments arising as a result of the grant to Lessee of the Option or Lessee's exercise thereof. Lessee shall have the right to contest the amount of any assessment imposed against the Premises or the possessory interest therein; provided, however, the entire expense of any such contest (including interest and penalties which may accrue in respect of such taxes) shall be the responsibility of Lessee.

The parties acknowledge that the Premises are and shall continue to be subject to possessory interest taxes, and that such taxes shall be paid by Lessee. This statement is intended to comply with Section 107.6 of the Revenue and Taxation Code. Lessee shall include a statement in all Subleases to the effect that the interests created therein may also be subject to possessory interest taxes, and that the Sublessee shall be responsible for any and all possessory interest taxes on the Sublessee's interest; however, Lessee acknowledges that the payment of such possessory interest taxes is the ultimate responsibility of Lessee.

4.2 Rental Payments. Throughout the Term, for the possession and use of the Premises granted herein, Lessee shall pay County a monthly amount equal to the greater of (a) Monthly Minimum Rent or (b) Percentage Rent.

4.2.1. Annual Minimum Rent and Monthly Minimum Rent. Lessee shall pay to County the minimum rent described in this subsection 4.2.1 (subject to adjustment pursuant to Sections 4.3 and 4.4 below) during each year of the Term (the "Annual Minimum Rent"). Annual Minimum Rent shall be payable by Lessee to County on a monthly basis in equal installments of one-twelfth (1/12th) of the Annual Minimum Rent (the "Monthly Minimum Rent"), except that any amounts payable for less than a full calendar year or month shall be prorated based on the number of days in such partial year or month as compared to the total number of days in the full calendar year or month during which such period occurs. During the period from the Effective Date until the earlier of the Completion Date or the Required Completion Date, the Annual Minimum Rent shall be equal to the product of (a) the average of the total Annual Rent payable by Lessee for each of the most recent three (3) year preceding the Effective Date but prior to the date that Lessee caused or permitted any space in the Improvements to become vacant in contemplation of the demolition and redevelopment of the Premises pursuant to Section 5.1 of this Lease, multiplied by (b) .75. During the three year period from and after the earlier of the Completion Date or the Required Completion Date, the Annual Minimum Rent shall be Two Hundred Fifteen Thousand Dollars (\$215,000.00) per year. From and after the third anniversary of the earlier of the Completion Date or the Required Completion Date, the Annual Minimum Rent shall be as set forth in Sections 4.3 and 4.4 below.

4.2.2. Percentage Rent. For the purposes of this Lease, "Percentage Rent" for any given month or year shall be defined as the sum of the amounts set forth in this Section. Gross Receipts (as defined herein) from each transaction, sale or activity of Lessee and/or any sublessee shall be reported under one or more of the following

percentage categories, as applicable. It is understood that Article 3 of this Lease provides for the Permitted Uses of the Premises and that the percentage categories listed below are not all applicable to this Lease and are in no way intended to expand or modify the Permitted Uses. Director, by Policy Statement and with the approval of Lessee, Auditor-Controller and County Counsel, has interpreted and may further interpret the percentage categories as set forth in this subsection 4.2.2, with such determinations and interpretations to be a guideline in determining the appropriate categories. Within fifteen (15) days after the close of each and every calendar month of the term hereof, Lessee shall file a report of Gross Receipts and pay to County a sum equal to the total of the following percentages for said previous month, less the amount of monthly installment of minimum rent paid for said previous month as provided herein:

(a) TWENTY FIVE PERCENT (25%) of Gross Receipts or other fees for the rental or use of boat slips, anchorages, moorings, dockside storage space, and such other facilities and services ancillary thereto as are generally provided in common to tenants thereof, including receipts obtained from persons who live on their boats; provided, however, that Percentage Rent from dockside gear lockers shall be TWENTY PERCENT (20%) of Gross Receipts therefrom;

(b) TWENTY FIVE PERCENT (25%) of Gross Receipts from the rental or other fees charged for the use of dry storage facilities, landside storage space, boats, motors, tackle, recreational equipment, tools, equipment, launch and retrieving of small boats and from the sale of live bait; provided, however, that Percentage Rent from landside gear lockers shall be TWENTY PERCENT (20%) of Gross Receipts therefrom;

(c) TEN AND ONE-HALF PERCENT (10.5%) of Gross Receipts or other fees charged for the occupancy of structures and other facilities including but not limited to (1) apartments, (2) hotel and/or motel accommodations, (3) house trailers, (4) meeting rooms, and (5) rental of land and/or water or facilities for activities not otherwise provided for in this Section such as but not limited to television and/or motion pictures;

(c1) TWELVE PERCENT (12%) of Gross Receipts or other fees charged for the occupancy of (1) offices utilized for banking, financial or investment activities, internal clerical or administrative activities, business enterprises, real estate and insurance brokerage, legal, medical, engineering, travel agencies, yacht club purposes, or similar uses; or (2) restaurants, stores, shops, or other commercial establishments; provided that, except as provided in subsection 4.2.2.5, Gross Receipts or other fees charged for the occupancy of restaurants, stores, shops or other commercial establishments shall not be included in the calculation of Percentage Rent under this subsection (c1) if the Gross Receipts from the operation of such businesses are required to be reported under other subsections of this Section;

(d) [INTENTIONALLY BLANK] \_\_\_\_\_ PERCENT ( \_\_%) of Gross Receipts from the sale of new or used boats, boat trailers, house trailers

and trailer cabanas including credits for used items taken in trade as part payment for new items, as reflected in the bill of sale. However, the trade-in allowance for such used item taken in trade may be deducted from the sale price of said used item, provided said used item is sold within one hundred twenty (120) days of the date of the bill of sale which established said trade-in allowance;

(e) TWENTY FIVE PERCENT (25%) of commissions or other fees earned from boat brokerage, car rental agencies, marine insurance commissions where the sale of insurance is conducted in conjunction with boat sales and/or boat brokerage, laundry and dry cleaning commissions and other similar activities where earnings are normally on a commission basis when said activity is approved in advance by Director;

(f) FIVE PERCENT (5%) of Gross Receipts received by Lessee or sublessee, or TWENTY PERCENT (20%) of any commissions or fees collected by Lessee, from service enterprises, including, without limitation, cable, internet, satellite, telecommunication, telephone and other utility services, and valet parking services;

(g) SIX PERCENT (6%) of Gross Receipts received by Lessee or sublessee, or TWENTY PERCENT (20%) of any commissions or fees collected from commercial boating activities including, but not limited to, charter boat, bareboat charters and sportfishing boats;

(h) FIVE PERCENT (5%) of Gross Receipts received by Lessee or sublessee or TWENTY-FIVE PERCENT (25%) of any commissions or other fees collected for the installation and/or operation of coin-operated vending or service machines, including pay telephones;

(i) TEN PERCENT (10%) of Gross Receipts from the operation of a bar, tavern, cocktail lounge, discotheque, night club or other facilities engaged primarily in the on-premises sale of alcoholic beverages except as provided for in subsection (j);

(j) FOUR PERCENT (4%) of Gross Receipts from the operation of any restaurants, restaurant/cocktail lounge combination, coffee shops, beach and theater food facilities, except that Gross Receipts from facilities established and operated as a take-out food operation shall be reported under subsection (s); a "take-out food operation" shall mean a restaurant or other food operation a majority of the Gross Receipts from which are derived from the sale of food or beverages to be consumed off-site;

(k) Intentionally omitted;

(l) Intentionally omitted;

(m) FIFTEEN PERCENT (15%) of Gross Receipts from club dues, initiation fees, and assessments, except that separate assessments for capital

improvements may be exempted; provided that to qualify for such an exemption Lessee must comply with the "Criteria for Eligibility for Exemption of Special Assessments from Gross Receipts" issued by the Director;

(n) [INTENTIONALLY BLANK] \_\_\_\_\_ PERCENT (\_\_\_\_%) of Gross Receipts or other fees charged from the operation of sightseeing boats, tour boats or water taxis;

(o) Intentionally omitted;

(p) [INTENTIONALLY BLANK] \_\_\_\_\_ PERCENT (\_\_\_\_%) of Gross Receipts or other fees charged by authorized boat repair yards, including repair, painting, tugboat, salvage and boat pump-out services and similar activities;

(q) FIVE PERCENT (5%) of Gross Receipts of cover charges or other fees charged for admission to facilities featuring entertainment, excluding movie theaters, whose Gross Receipts shall be reportable under subsection (s);

(r) TWENTY FIVE PERCENT (25%) of Gross Receipts from parking fees, except that (1) parking fees or charges, if any, which are collected in conjunction with an activity the Gross Receipts from which are required to be reported in a percentage category higher than twenty five percent (25%) shall be included in Percentage Rent at such higher percentage; and (2) valet parking charges, fees and tips shall not be included in Percentage Rent under this subsection, but instead shall be included in Percentage Rent under subsection (f) above;

(s) FIVE PERCENT (5%) of Gross Receipts from the sale of miscellaneous goods and services consistent with the Permitted Uses but not specifically provided for elsewhere in this Section;

(s1) FIVE PERCENT (5%) of the Gross Receipts from the operation of all stores, shops or boutiques selling items at retail; and,

(t) Notwithstanding the foregoing, and notwithstanding the provisions of subsection (m) of this subsection 4.2.2, the percentage of Gross Receipts payable from club dues, initiation fees, and assessments shall be TEN PERCENT (10%) for so long as Lessee is in compliance with its "Public Service Plan". For the purposes of this subsection, compliance with its "Public Service Plan" shall mean, for any calendar year or portion thereof, that (1) Lessee has submitted to Director no later than January 15 of such year, and Director has approved, satisfactory evidence that Lessee has expended in the prior calendar year an amount no less than five percent (5%) of Gross Receipts payable from club dues, initiation fees, and assessments toward public service programs and expenditures which have been approved by Director and which may include Lessee's costs of compliance with the terms of Section 3.9 hereof. Such Public Service Plan shall additionally set forth in detail Lessee's plans, arrangements and intention to



comply with the provisions of Section 3.9 of this Lease for such calendar year, together with (i) a Lessee's written certification that it has complied with the terms of Section 3.9 of this Lease and has fully implemented its Public Service Plan, as approved by Director, for the prior calendar year and (ii) Lessee's proposed expenditures of no less than five percent (5%) of Gross Receipts payable from club dues, initiation fees, and assessments toward public service programs in the current calendar year, to the extent that Lessee desires to avail itself of the percentage rent reduction in this subsection 4.2.2(t). In the event that Director disapproves Lessee's Public Service Plan or otherwise determines that Lessee is not in compliance with the requirements of its Public Service Plan or Section 3.9 of this Lease, or Lessee fails to provide Director with adequate documentation evidencing Lessee's expenditures or compliance with the prior year's Public Service Plan, which failure is not remedied within thirty (30) days after written notice from Director to Lessee, the Percentage Rent applicable to the foregoing income category shall be increased by FIVE PERCENT (5%) from and after the first day of the first month after the date upon which Director determines Lessee was no longer in compliance with its Public Service Plan until compliance is reestablished to the satisfaction of Director. Nevertheless, Lessee's failure to comply with the requirements of its Public Service Plan (other than with respect to the requirements of Section 3.9) shall not constitute an Event of Default hereunder.

(u) The specific percentages set forth above apply to those Permitted Uses of the Premises which are applicable as of the Execution Date. Where a specific percentage in the foregoing schedule has not been provided, then, concurrent with County or Director's approval of a specific additional or related use, Director shall establish the specific percentage to be applied to such additional or related use. Such percentage shall be the greater of (1) the average percentage rent received by County with respect to that category of activities within Marina del Rey, California at the time of approval of the additional or related use, and (2) the most recent agreement by County, whether by arbitration or otherwise, with respect to the appropriate percentage to be applied to that use. The percentage rent for the related use as determined by Director shall remain in effect until the next Renegotiation Date.

4.2.2.1. Other Activities. If Director or Lessee determine that a percentage of Gross Receipts is not suitable or applicable for a particular activity not described above, although permitted hereunder, Director and Lessee shall mutually establish a minimum monthly payment to County as payment for the privilege of engaging therein, which shall remain effective until the next Renegotiation Date. Said minimum monthly amount shall be reasonable in accordance with the revenue generated by such activity and shall be included in Percentage Rent, as determined hereunder, in lieu of a percentage of Gross Receipts therefor. If Director and Lessee cannot agree upon such reasonable minimum monthly payment, the matter shall be resolved by arbitration as provided in Article 16 hereof.

4.2.2.2. Accounting Records and Procedures. Lessee agrees to and shall comply with, and shall cause all of its sublessees, licensees, permittees and concessionaires to agree to and comply with, the recordkeeping and accounting procedures, as well as the inspection and audit rights granted to County, set forth in Article 14 of this Lease.

4.2.2.3. Gross Receipts. Except as herein otherwise provided, the term "Gross Receipts" as used in this Lease means all money, cash receipts, or other things of value, including but not limited to gross charges, sales, rentals, common area maintenance payments, operating expense reimbursements, fees and commissions made or earned by Lessee and/or all its assignees, Sublessees, licensees, permittees or concessionaires, whether collected or accrued from any business, use, occupation or any combination thereof, originating, transacted, or performed in whole or in part, on the Premises, including but not limited to rentals, the rendering or supplying of services and the sale of goods, wares or merchandise.

(i) Except as otherwise set forth herein, there shall be no deduction from Gross Receipts for any overhead or cost or expense of operation, such as, without limitation, salaries, wages, costs of goods, interest, debt amortization, rent credit, collection costs, discounts from credit card operations, insurance and taxes.

(ii) Gross Receipts shall not include direct taxes imposed upon and collected from the consumer, such as, without limitation, retail sales taxes, excise taxes, or related direct taxes paid periodically to a governmental agency accompanied by a tax return statement.

(iii) Gross Receipts reported by Lessee and its Sublessees, assignees, licensees, Lessees and permittees must include the usual charges for any services, goods, rentals or facilities provided by Lessee or its Sublessees, assignees, licensees, concessionaires or permittees. Bona fide bad debts actually accrued by Lessee for amounts owed by subtenants, assignees, licensees concessionaires or permittees may be deducted from Gross Receipts to the extent that such amounts have been previously reported as Gross Receipts; however, there shall be no deduction for bad debts based on past experience or transfer to a bad debt reserve. Subsequent collection of bad debts previously not reported as Gross Receipts shall be included in Gross Receipts at the time they are collected. Notwithstanding anything to the contrary contained herein, Lessee shall be permitted to make monthly payments of Percentage Rent using the cash method of accounting to determine Gross Receipts, provided that Lessee provides County with an annual reconciliation of its cash basis determination of Gross Receipts to the accrual method (together with payment of any additional Percentage Rent due).

(iv) Gross Receipts shall not include any of the following items:

- a. goods returned to suppliers or which are delivered for resale (as opposed to delivery) to another retail location or to a warehouse or to any retailers without profit to Lessee or Sublessee, where such returns or deliveries are made solely for the convenient operation of the business of Lessee or Sublessee and not for the purpose of consummating a sale made in, about or from the Premises;
- b. an amount equal to the cash refunded or credit allowed on merchandise returned by customers and accepted by Lessee or Sublessee, or the amount of cash refunded or credit allowed thereon in lieu of Lessee's or Sublessee's acceptance thereof, but only to the extent that the sales relating to such merchandise were made in, about or from the Premises; provided that whenever Lessee or Sublessee accepts a credit slip as payment for goods or services, the amount of credit shall be included in Gross Receipts;
- c. sales of fixtures, equipment or property which are not Lessee's or Sublessee's stock in trade;
- d. receipts from insurance claims other than rental interruption or business interruption insurance;
- e. interest earned by Lessee or Sublessee on funds arising from the Premises or the use thereof, deposited or maintained by Lessee or Sublessee in banks or similar financial institutions;
- f. the Cost of Sublessee's submetered electricity, provided (1) each Sublessee's obligation to reimburse Lessee for such Sublessee's electrical charges is separate and apart from such Sublessee's obligation to pay rent for its occupancy of the Premises; (2) the reimbursed sum is in an amount equal to the Cost of the Sublessee's electricity; and (3) the receipt is actually credited against the cost of the Sublessee's electricity. For the purpose of the foregoing sentence, the "Cost" of the Sublessee's electricity shall mean the actual costs incurred by Lessee, exclusive of overhead and general and administrative expenses, in paying the portion of the respective utility's electric bill that is allocable to the Sublessee based on such Sublessee's submetered consumption of electricity, and in paying the portion of any third party submeter reading and service charge to each submeter that is actually read and a direct allocation of the submeter service charge to each such submeter that is serviced. County shall have the right to approve all submeters and to challenge the legitimacy or amount of any Cost, and all disputes regarding such County approvals or challenges, if not resolved by the parties within thirty (30) days after notice to Lessee of such disapproval or challenge, shall be resolved by arbitration pursuant to Article 16 of this Lease.

4.2.2.4. Excess Payments Credit. If rent payments actually made by Lessee in a particular Lease Year exceed the total rentals actually due for that year as computed on an annual basis at the end of each Lease Year, Lessee shall be

permitted to credit that excess amount ("Excess Percentage Rent Payment") against the succeeding monthly installments of Percentage Rent otherwise due under this subsection 4.2.2 until such time as the entire Excess Percentage Rent Payment has been recouped. If Lessee makes an Excess Percentage Rent Payment in the final Lease Year of the Term, County shall refund such amount to Lessee within thirty (30) days of its discovery and verification of such overpayment.

4.2.2.5. Effect of Sublessee, etc. Doing Business. Except as specifically provided to the contrary in this Lease, where a Sublessee, licensee, or permittee is conducting a business or engaged in any use or occupation or any combination thereof on Lessee's leasehold except for those uses or occupations delineated under Item (1) of subsection (c1) of subsection 4.2.2, Lessee shall report whichever of the following results in the greater percentage rental: (1) the Gross Receipts of each Sublessee under one or more of the appropriate subsections of this Section; or (2) Lessee's receipts from each Sublessee under subsection (c) or (c1) of this Section.

4.2.2.6. Interest; Etc. Interest, service or late charges collected in conjunction with a transaction, sale or activity of Lessee or Sublessee shall be reported in the same percentage category as the transaction, sale or activity is reported.

4.2.2.7. Percentage Rent Does Not Affect Permitted Uses. It is understood and acknowledged by Lessee that Section 3.1 of this Lease sets forth the Permitted Uses of the Premises by Lessee; thus, the Percentage Rent categories listed in subsection 4.2.2 are not all necessarily applicable to this Lease and are in no way intended to expand the Permitted Uses.

4.2.2.8. Policy Statements. Director, by Policy Statement and with the approval of Lessee, Auditor-Controller and County Counsel may further interpret the definition of Gross Receipts, with such interpretations to be a guideline in implementing the foregoing subsections of this Lease.

4.3 Adjustments to Annual Minimum Rent. As of the third (3rd) anniversary of the Completion Date (or as of the third (3<sup>rd</sup>) anniversary of the Required Completion Date if the Completion Date does not occur on or before the Required Completion Date) (the "First Adjustment Date") and as of each third (3rd) anniversary of the First Adjustment Date thereafter (each an "Adjustment Date" and collectively the "Adjustment Dates"), the Annual Minimum Rent shall be adjusted. Until the Renegotiation Date provided in Section 4.4 hereof, the Annual Minimum Rent shall be adjusted as of each Adjustment Date to the amount which equals seventy five percent (75%) of the average of the scheduled total annual rent due (including Monthly Minimum Rent and Percentage Rent) from Lessee to County under Section 4.2 of this Lease during the thirty-six (36) month period immediately preceding the Adjustment Date; provided, however, if the Completion Date does not occur by the Required Completion Date, then for purposes of determining the average total annual rent that was payable for the thirty-six (36) month period prior to the First Adjustment Date, the total per diem annual rent for the period

from the Required Completion Date until the Completion Date shall be deemed to be the same total per diem annual rent that was payable by Lessee for the period from the Completion Date until the next anniversary of the Required Completion Date.

4.4 Renegotiation of Annual Minimum and Percentage Rents. Effective on each tenth (10th) anniversary of the Completion Date (or effective on each tenth (10<sup>th</sup>) anniversary of the Required Completion Date if the Completion Date does not occur on or before the Required Completion Date (each a "Renegotiation Date" and collectively, the "Renegotiation Dates"), the Annual Minimum Rent and Percentage Rent shall be readjusted to the Fair Market Rental Value (as defined below) of the Premises.

4.4.1. Fair Market Rental Value. As used herein, "Fair Market Rental Value" shall mean, as of each Renegotiation Date, the fair market rent (including an annual minimum rent), expressed as respective percentages of Gross Receipts in accordance with the categories enumerated in subsection 4.2.2, which the Premises (with any and all Improvements existing thereon deemed to be owned by County as of the Renegotiation Date) would bring, on an absolute net basis, taking into account the Permitted Uses, all relevant and applicable County policies and all of the other terms, conditions and covenants contained in the Lease, if the Premises were exposed for lease for a reasonable time on an open and competitive market to a lessee for the purpose of the Permitted Uses, where County and the respective tenant are dealing at arms length and neither is under abnormal pressure to consummate the transaction, together with all restrictions, franchise value, earning power and all other factors and data taken into account in accordance with California law applicable from time to time to eminent domain proceedings. Notwithstanding any contrary provision hereof, in no event shall the Fair Market Rental Value of Percentage Rents ever be less than the specific numeric percentages set forth in subsection 4.2.2 of this Lease.

4.4.2. Renegotiation Period. Not more than one (1) year nor less than nine (9) months prior to the Renegotiation Date, Lessee shall deliver to County written notice setting forth Lessee's determination of the Fair Market Rental Value of the Premises. Lessee's notice shall include a list of comparable properties and/or complete copies of any appraisals which it has utilized in its determination, together with such other information regarding such comparable properties or the Premises as Lessee deems relevant or as may be reasonably requested by County. Within one hundred twenty (120) days after receipt of Lessee's notice, if County disagrees with Lessee's determination, County shall deliver to Lessee written notice of such disagreement, together with County's determination of Fair Market Rental Value and a list of comparable properties and/or complete copies of any appraisals which it has utilized in its determination, together with such other information regarding such comparable properties or the Premises as County deems relevant or as may be reasonably requested by Lessee, to the extent available to County. If County fails to deliver to Lessee notice of its disagreement within the aforementioned period and such failure continues for fifteen (15) days after receipt of written notice from Lessee, then Lessee's determination of Fair Market Rental Value shall be binding on County as of the Renegotiation Date; provided, however, that Lessee's notice to County shall conspicuously state in bold faced type that such

determination of Fair Market Rental Value shall be binding on County unless County delivers notice of its disagreement within such fifteen (15) day period.

If Lessee fails to deliver the notice described in the first sentence of this subsection, setting forth Lessee's determination of Fair Market Rental Value, and such failure continues for fifteen (15) days after receipt of written notice from County, then County shall submit its determination of Fair Market Rental Value to Lessee, and Lessee shall have fifteen (15) days to deliver to County written notice of Lessee's agreement or disagreement with County's determination. If Lessee fails to deliver notice of such disagreement, then County's determination of Fair Market Rental Value shall be binding on Lessee as of the Renegotiation Date.

4.4.3. Negotiation of Fair Market Rental Value. If County (or Lessee, as the case may be) does so notify Lessee (or County, as the case may be) of its disagreement as provided in subsection 4.4.2, County and Lessee shall have sixty (60) days from the end of the applicable response period in which to agree upon the Fair Market Rental Value for the Premises. County and Lessee shall negotiate in good faith during said sixty (60) day period. If the parties do so agree, they shall promptly execute an amendment to this Lease setting forth the Fair Market Rental Value so jointly determined, to be effective upon the Renegotiation Date. Director shall be authorized to execute any such amendment on behalf of County. During the period of negotiation, Lessee shall abide by all of the terms and conditions of this Lease, including but not limited to the obligation to pay to County Annual Minimum Rent and Percentage Rent at the level existing for the last year of the ten (10) year period then completed.

4.4.4. Arbitration. If County and Lessee fail to reach agreement during the sixty (60) day period set forth in subsection 4.4.3, then, unless the parties agree otherwise, the Fair Market Rental Value of the Premises shall be determined by arbitration as set forth in Article 16 of this Lease and the parties shall execute an amendment to this Lease setting forth the Fair Market Rental Value as determined by arbitration. In order to determine the Fair Market Rental Value of the Premises, the arbitrator shall take into consideration all of the terms, conditions and covenants of this Lease, the earning power and all of the factors and data relating to such value required or proper to be considered in determining the fair rental value of leaseholds under the laws of eminent domain in the State of California. During the period of arbitration, County and Lessee shall abide by all of the terms and conditions of this Lease, including but not limited to Lessee's obligation to pay to County Annual Minimum Rent and Percentage Rent at then existing levels.

4.4.5. Retroactivity. In the event that, pursuant to subsections 4.4.3 or 4.4.4 hereof, the parties execute an amendment to this Lease setting forth the Fair Market Rental Value and the Annual Minimum Rent, such amendment, if executed prior to the Renegotiation Date, shall be effective as of the Renegotiation Date; if executed after the Renegotiation Date, such amendment shall be retroactive to the Renegotiation Date. In the event that such amendment is executed after the Renegotiation Date, then, within seven (7) days after such execution, Lessee shall pay to County, or County shall at its election pay or credit to Lessee, the difference, if any, between (a) such Fair Market Rental Value for the Premises and (b) the actual Annual Minimum Rent and Percentage

Rent paid by Lessee to County, for the period of time from the Renegotiation Date until the date of such payment. Lessee (with respect to overpayments) or County (with respect to underpayments) shall further be entitled to interest, compounded monthly, on each portion of such payment from each date on which the applicable rental payments were payable under this Lease to the date paid or credited, whichever is applicable, at the following rates:

(i) the interest rate applicable to the first six (6) months following the Renegotiation Date shall be equal to the average daily rate for the non-restricted funds held and invested by the Treasurer and Tax Collector of Los Angeles County during that period, computed by the Auditor-Controller ("County Pool Rate"); and,

(ii) the interest rate applicable to any period of time in excess of six (6) months following the Renegotiation Date shall be the average daily variable prime rate of interest published in the Wall Street Journal (the "Prime Rate") plus one percent (1%) for the period between the date which is six (6) months after the Renegotiation Date and the date of payment.

4.5 Payment and Late Fees. Monthly Minimum Rent shall be paid by Lessee in advance. Payments of Minimum Monthly Rent shall be received by County on or before the first day of each calendar month of the Term. Percentage Rent shall be paid by Lessee in arrears. Percentage Rent due, if any, for a given month of the Term shall be received by County on or before the fifteenth day of the calendar month following each month of the Term, calculated as follows: the Lessee shall calculate the total Percentage Rent owed to County for the relevant month of the Term; it shall deduct from said amount the total Monthly Minimum Rent paid to County for that same month; if the resulting amount is a positive number, Lessee shall pay that amount to County; if that amount is a negative number, no Percentage Rent shall be paid to County for that month but nevertheless the Monthly Minimum Rent shall be paid every month of the Term hereof. Percentage Rent payments shall be reconciled annually at the end of each Lease Year, with any Excess Percentage Rent Payments credited as provided in subsection 4.2.2.4. Payment may be made by check or draft issued and payable to The County of Los Angeles, and mailed or otherwise delivered to the Department of Beaches and Harbors, Los Angeles County, 13483 Fiji Way, Trailer No. 2, Marina del Rey, California 90292, or such other address as may be provided to Lessee by County. Lessee acknowledges that County shall have no obligation to issue monthly rental statements, invoices or other demands for payment, and that the rental payments required herein shall be payable notwithstanding the fact that Lessee has received no such statement, invoice or demand. In the event any payment is not received by County within five (5) days after the date due, Lessee acknowledges that County will experience additional management, administrative and other costs that are impracticable or extremely difficult to determine. Therefore, a fee ("Late Fee") of six percent (6%) of the unpaid amount shall be added to any amount not paid within five (5) days after the date due and payable; provided that the Late Fee shall be waived with respect to the first occurrence during any Lease Year of a late payment if such payment is received by County within one (1) business day following written notice from County that the unpaid amount was not paid by the date due. In addition to any Late Fee, any unpaid rent due shall additionally bear interest at an annual rate equal to the Prime Rate plus three percent (3%), computed from the date when such amounts

were due and payable, compounded monthly, until paid. Lessee acknowledges that such Late Fee and interest shall be applicable to all identified monetary deficiencies under this Lease, whether identified by audit or otherwise, and that interest on such amounts shall accrue from and after the date when such amounts were due and payable as provided herein (as opposed to the date when such deficiencies are identified by County).

4.6 Changes of Ownership and Financing Events. Except as otherwise provided in this Section 4.6, each time Lessee proposes either (a) a Change of Ownership or (b) a Financing Event, County shall be paid (1) an Administrative Charge equal to the Actual Cost incurred by County in connection with its review and processing of said Change of Ownership or Financing Event ("Administrative Charge") and (2) a Net Proceeds Share, in the event County approves such proposed Change of Ownership or Financing Event and such transaction is consummated. "Net Proceeds Share" shall mean the applicable amount determined pursuant to Section 4.8 of this Lease. Changes of Ownership and Financing Events are further subject to County approval as provided in Articles 11 and 12 of this Lease.

4.6.1. Change of Ownership. "Change of Ownership" shall mean (a) any transfer by Lessee of a five percent (5%) or greater direct ownership interest in this Lease or in any Major Sublease, (b) Lessee's granting of a Major Sublease or (c) any transaction or series of related transactions not described in subsections 4.6.1(a) or (b) which constitute an Aggregate Transfer of fifty percent (50%) or more of the beneficial interests in, or a Change of Control of, Lessee, this Lease or a Major Sublease. For the purposes of this Lease, "Change of Control" shall refer to a transaction whereby the transferee acquires a beneficial interest in Lessee, this Lease or a Major Sublease which brings its cumulative beneficial interest in Lessee, this Lease or a Major Sublease, as appropriate, to over fifty percent (50%).

4.6.2. Excluded Transfers. Notwithstanding anything to the contrary contained in this Lease, Changes of Ownership resulting from the following transfers shall not be deemed to create an obligation to pay County a Net Proceeds Share, and, except for a transfer described in subsection 4.6.2.1, County shall have no approval rights with respect thereto (other than those approval rights set forth below regarding the managing general partner of Lessee), although County shall be provided with prior written notice of the change of ownership and Lessee shall reimburse County for the Actual Cost of its review of such transactions, which review with respect to the transactions described in subsections 4.6.2.2 through 4.6.2.6 shall be limited to confirming that each change of ownership qualifies as an Excluded Transfer under this subsection 4.6.2:

4.6.2.1.a transfer by any direct or indirect partner (which for purposes of this subsection 4.6.2 shall also mean member, shareholder or other interest holder if Lessee becomes an entity other than a partnership) of Lessee as of the Execution Date, to any other direct or indirect partner of Lessee as of the Execution Date;

4.6.2.2.a transfer to a spouse in connection with a property settlement agreement or decree of dissolution of marriage or legal separation, or a transfer by a direct or indirect partner of Lessee directly to a spouse, sibling or descendant;



provided, however, that County shall at all times have the right to approve the managing general partner, or managing member if Lessee hereby becomes a limited liability company (and the controlling interest in such managing general partner or managing member), of Lessee following such a transfer;

4.6.2.3.a transfer of the existing interests in Lessee held by a direct or indirect partner of Lessee to any living trust, by way of gift, devise, intestate succession or operation of law, where the transferee living trust's assets are substantially the same as the transferor and the beneficiaries of said trust are members of the transferor's immediate family (which for the purposes of this subsection shall be limited to the transferor's spouse, children, parents, siblings and grandchildren), together with the subsequent transfer of such interests to such beneficiaries upon the death of such partner; provided, however, the parties acknowledge (a) that a subsequent dilution or transfer of said interests shall be subject to County approval and fees as provided herein, and (b) County shall have at all times the right to approve the managing general partner, or managing member in the event that Lessee becomes a limited liability company (and the controlling interest in such managing general partner or managing member), of Lessee.

4.6.2.4.a transfer of a beneficial interest resulting from public trading in the stock or securities of an entity, where such entity is a corporation whose stock is traded publicly on a national stock exchange or is traded in the over-the-counter market and whose price is regularly quoted in recognized national quotation services;

4.6.2.5.a mere change in the form, method or status of ownership (other than a transfer of beneficial interests between or among individuals and/or entities controlled by such individuals); provided that this exclusion shall not apply to a single transaction or series of related transactions whereby an Aggregate Transfer of fifty percent (50%) or more of the beneficial interests in Lessee, this Lease or a Major Sublease has occurred, except if the transfer is purely a change in the form of ownership, such as a conversion of Lessee's partnership to a corporation or limited liability company, as long as there is a continuity of management; or

4.6.2.6.any transfer resulting from a Condemnation by County or other governmental entity having the power of eminent domain if consented to by County.

4.6.3. Aggregate Transfer. "Aggregate Transfer" shall refer to the total percentage of the shares of stock, partnership interests, membership interests or any other equity interests (which constitute beneficial interests in Lessee, this Lease or a Major Sublease, as appropriate) transferred in all transactions (other than those enumerated in subsection 4.6.2) occurring since the later of (a) the Effective Date, (b) the execution by Lessee of this Lease or a Major Sublease, as appropriate, or (c) the most recent Change of Ownership upon which an Administrative Charge was paid to County.

4.6.4. Beneficial Interest. As used in this Lease, the “beneficial interest,” “beneficial interest in this Lease,” or “beneficial interest in a Major Sublease” shall refer to the interests of the natural persons who comprise the ultimate owner or owners of Lessee’s interest in this Lease or a Major Sublease, or a Major Sublessee’s interest in a Major Sublease, whichever is appropriate, regardless of the form of such ownership and regardless of whether such interests are owned through corporations, trusts, partnerships, limited liability companies or layers thereof; provided, however, that if an entity with an ownership interest in the Lease or a Major Sublease is a partnership, corporation or limited liability entity (a) whose beneficial interest in this Lease or a Major Sublease, whichever is appropriate, comprises less than fifteen percent (15%) of its total assets or (b) in which no ten (10) shareholders, partners or members together own more than thirty percent (30%) of the partnership interests, shares, membership interests or other equity interests in the entity, then for the purposes of Sections 4.6 through 4.8 hereof, the entity itself shall be deemed to be the ultimate owner of the beneficial interest in this Lease or a Major Sublease, as appropriate, and the owners of such entity shall not be treated as the ultimate owners of such beneficial interest.

4.6.4.1. Interests Held By Entities. Except as otherwise provided herein, an interest in Lessee, this Lease or a Major Sublease held or owned by a partnership, limited liability company, corporation or other entity shall be treated as owned by the partners, members, shareholders or other equity holders of such entity in proportion to their respective equity interests, determined by reference to the relative values of the interests of all partners, members, shareholders or other equity holders in such entity. Where more than one layer of entities exists between Lessee or a Major Sublessee, as appropriate, and the ultimate owners, then the foregoing sentence shall be applied successively to each such entity in order to determine the ownership of the beneficial interests in Lessee, this Lease or a Major Sublease, as appropriate, and any transfers thereof.

4.6.4.2. Ownership of Multiple Assets. The proceeds of any event constituting or giving rise to a Change of Ownership shall be apportioned to this Lease or a Major Sublease, whichever is appropriate, and to any other assets transferred in the same transaction in proportion to the relative fair market values of the respective assets transferred. The Net Proceeds Share shall be calculated only by reference to the amount of such proceeds apportioned to this Lease, a Major Sublease or the beneficial interests therein, whichever is appropriate.

4.7 Calculation and Payment. A deposit of Fifteen Thousand and 00/100 Dollars (\$15,000) toward the Administrative Charge shall be due and payable upon Lessee’s notification to County of the proposed Change of Ownership or Financing Event and request for County’s approval thereof. If the transaction is approved, the balance of the Administrative Charge, if any, and the Net Proceeds Share shall be due and payable concurrently with the consummation of the transaction constituting the Change of Ownership or Financing Event giving rise to the obligation to pay such fee, regardless of whether or not money is transferred by the parties in connection with such consummation. If County disapproves the proposed transaction then, within thirty (30) days after notice of its disapproval, County shall deliver to Lessee a written notice setting forth the Administrative Charge, together with a refund of the amount, if any, of

the deposit in excess of the Administrative Charge otherwise allowable under Section 4.6. In the event that the Administrative Charge exceeds the deposit, then Lessee shall pay County the balance of the Administrative Charge otherwise allowable under Section 4.6 within thirty (30) days after receipt of the notice from County setting forth the Administrative Charge and any supporting documentation reasonably requested by Lessee within five (5) business days after its receipt of such notice. Together with its request for County approval of the proposed transaction, Lessee, a Major Sublessee or the holder of a beneficial interest in this Lease or a Major Sublease, whichever is appropriate, shall present to County its calculation of the Net Proceeds Share (if any) anticipated to be derived therefrom, which shall include the adjustment to Improvement Costs, if any, which may result from the payment of such Net Proceeds Share ("Calculation Notice"). Each Calculation Notice shall contain such detail as may be reasonably requested by County to verify the calculation of the Net Proceeds Share. Within thirty (30) days after the receipt of the Calculation Notice and all information or data reasonably necessary for County to verify the calculations within the Calculation Notice, County shall notify the party giving the Calculation Notice as to County's agreement or disagreement with the amount of the Net Proceeds Share set forth therein or the related adjustment of Improvement Costs, if any. Failure of County to approve the Calculation Notice in writing within such thirty (30) day period shall be deemed to constitute County's disapproval thereof. Failing mutual agreement within thirty (30) days after the expiration of said thirty (30) day period, the dispute shall be resolved by arbitration as set forth in Article 16 of this Lease in the manner prescribed herein for the resolution of disputes concerning Fair Market Rental Value. In the event County approves a Change of Ownership or Financing Event but a dispute exists as to the Net Proceeds Share in respect thereof or the related adjustment, if any, in Improvement Costs, then the transaction may be consummated after County has disapproved Lessee's Calculation Notice; provided, however, that (i) Lessee shall remit to County as otherwise required hereunder the undisputed portion of the Net Proceeds Share and (ii) Lessee shall deposit the disputed portion of the Net Proceeds Share into an interest bearing escrow account at the closing of the transaction, which portion shall be distributed in accordance with the arbitration of the dispute pursuant to Article 16 of this Lease, in the manner prescribed herein for the resolution of disputes concerning Fair Market Rental Value.

4.7.1. Transfer of Less Than Entire Interest. Where a Change of Ownership has occurred by reason of the transfer of less than all of an owner's beneficial interest in Lessee, this Lease or a Major Sublease, the Net Proceeds Share shall be due and payable with respect to those portions of such beneficial interest that have been acquired by the transferee since the latest of (a) the Effective Date, (b) the date of the execution of this Lease (or a Major Sublease) by Lessee, (c) the most recent event creating Lessee's obligation to pay a Net Proceeds Share (including without limitation an approval by County of a transfer at a price which falls below the threshold for paying a Net Proceeds Share) with respect to this Lease (or a Major Sublease), or (d) the date which is twelve (12) months prior to the transfer which constitutes the Change of Ownership.

4.7.2. Purchase Money Notes. If the transferor of an interest accepts a note made by the transferee of such interest in payment of all or a portion of the acquisition cost (a "Purchase Money Note"), such note shall be valued at its face amount; provided that if the interest rate on such Purchase Money Note is in excess of a market rate, then the value of such note shall be increased to reflect such above-market rate. Any disputes

between County and Lessee as to whether the interest rate on a Purchase Money Note is in excess of a market rate or with respect to the valuation of a Purchase Money Note with an above-market rate of interest, shall be settled by arbitration pursuant to Article 16 below.

4.7.3. Obligation to Pay Net Proceeds Share and Administrative Charge. With respect to a Change of Ownership giving rise to the Administrative Charge and Net Proceeds Share, the obligation to pay the Administrative Charge and Net Proceeds Share shall be the joint and several obligation of the transferor and transferee; provided, however, that the transferee shall not be liable for the payment of the Administrative Charge or Net Proceeds Share if the transferor provides County with a deposit, letter of credit or other security satisfactory to County for the payment thereof. In the event that the Administrative Charge or Net Proceeds Share is not paid when due with respect to the beneficial interest in this Lease, then County shall have the remedies set forth in Section 13.3 hereof.

4.8 Net Proceeds Share. In the event of a Change of Ownership, the Net Proceeds Share shall be a sum equal to the greater of (a) five percent (5%) of the gross sale or transfer proceeds or other consideration given for the interests transferred (but in the case of a transfer to a party affiliated with or otherwise related to the transferor, such consideration shall in no event be deemed to be less than the fair value of the interests transferred), or (b) twenty percent (20%) of the Net Transfer Proceeds from such transfer. With respect to a Financing Event, the Net Proceeds Share (if any) shall be equal to twenty percent (20%) of the Net Refinancing Proceeds from such Financing Event.

4.8.1. Transaction by Original Lessee. In the case of a transfer by Lessee (but not a successor or assignee of Lessee) constituting a Change of Ownership, "Net Transfer Proceeds" shall mean the total cash and other consideration received (but in the case of a transfer to a party affiliated with or otherwise related to the transferor, such consideration shall in no event be deemed to be less than the fair value of the interests transferred), less the following costs with respect to Lessee (but not its successors or assignees):

4.8.1.1. \$\_\_\_\_\_ (the "Existing Value"), (b) the amount of the Option Fee paid by Lessee under the Option Agreement, (c) the actual out-of-pocket costs incurred by Lessee for its third party consultants and attorneys in connection with the negotiation and consummation of the transactions resulting in the execution of this Lease, and (d) the Actual Costs reimbursed by Lessee to County pursuant to Section 15.3 of this Lease (the "Base Value"); plus

4.8.1.2. the final actual construction costs paid by Lessee in connection with the construction of the Redevelopment Work or other physical Improvements to the Premises in accordance with Article 5 herein (including future capital redevelopment and rehabilitation work, but not periodic maintenance and repair) to the Premises in accordance with the requirements of this Lease ("Improvement Costs"), whose costs have been submitted to Director within thirty (30) days after the completion of such Improvements and which costs shall have been certified in writing to Director by Lessee to have been

incurred, along with evidence reasonably satisfactory to Director that such costs have been incurred. Alternatively, with respect to capital improvements that are not part of the initial Redevelopment Work, Lessee shall be entitled to adopt a program of annual submissions to Director within ninety (90) days following the end of each Lease Year. Construction costs shall include all hard and soft costs (including out-of-pocket design and predevelopment costs incurred prior to the date of the Lease for Redevelopment Work or other physical Improvements constructed after the Effective Date, construction period interest on Lessee's construction loan, and developer fees incurred by Lessee, as long as such developer fees do not exceed four percent (4%) of hard construction costs); plus

4.8.1.3. commissions, title and escrow costs, documentary transfer taxes, reasonable attorneys' fees, prepayment or yield maintenance premiums and other bona fide closing costs actually paid to third parties and documented to the satisfaction of County, which costs were directly attributable to the consummation of the particular transaction giving rise to the obligation to pay County a Net Proceeds Share (collectively, "Documented Transaction Costs"); plus

4.8.1.4 That portion of the principal amount of any Financing Event after the Effective Date that constituted Net Refinancing Proceeds on which Lessee paid County a Net Proceeds Share.

4.8.2. Transfer by Lessee's Successor. In the case of a transfer by a Lessee other than the original Lessee, "Net Transfer Proceeds" shall mean the total cash and other consideration received by that successor Lessee (but in the case of a transfer to a party affiliated with or otherwise related to the transferor, such consideration shall in no event be deemed to be less than the fair value of the interests transferred), minus the following costs with respect to such successor Lessee:

4.8.2.1. the greatest of (a) the Base Value plus the amount of any Improvement Costs incurred prior to such successor Lessee's acquisition of its leasehold interest in the Premises, (b) the purchase price such successor paid to Lessee or such successor's seller for the interest acquired (or the fair market value of the interests transferred in connection with the seller's acquisition of the leasehold if utilized in connection with the calculation of Net Transfer Proceeds with respect to that sale) or (c) the original principal amount of any Financing Event or Financing Events (on a non-duplicative basis) after such successor Lessee's acquisition of the leasehold and with respect to which County was paid a Net Proceeds Share, plus the principal amount of any financing existing as of the date on which such seller acquired the leasehold or subsequently obtained by Lessee, if such financing has not been refinanced, but without duplication;

4.8.2.2. Improvement Costs actually paid by such successor Lessee after such successor Lessee's acquisition of its leasehold interest in the Premises, and not subsequently repaid with Net Refinancing Proceeds, provided that such costs have been submitted to and approved by County to the extent provided in subsection 4.8.1.1 with respect to Lessee; and,

4.8.2.3. Documented Transaction Costs with respect to the transfer of the interest by the successor.

4.8.3. Transfers of Major Sublessee's Interest. With respect to any Change of Ownership described in subsection 4.6.1(b), subsections 4.8.1 and 4.8.2 shall apply, except that any rents or other amounts received by Lessee from the Major Sublessee and passed through to County under any provision of this Lease (other than payment of Net Proceeds Share) shall be disregarded in the computation of Net Transfer Proceeds.

4.8.4. Other Transfers. With respect to any Change of Ownership not described in subsections 4.8.1 through 4.8.3 (i.e., a transfer of an interest in an entity holding a direct or indirect ownership interest in this Lease or in a Major Sublease), subsections 4.8.1 and 4.8.2 shall apply to such Change of Ownership, except that in lieu of deducting the Existing Value (if any) and Improvement Costs in determining Net Transfer Proceeds, the cost to the transferor of the interest being transferred shall be deducted. Furthermore, in the event that any such Change of Ownership produces a Net Proceeds Share, the then existing Improvement Costs shall be increased by an appropriate amount to reflect such Net Proceeds Share, as if it had been realized by Lessee upon a transfer of a comparable interest in this Lease or in a Major Sublease, as appropriate.

4.8.5. Net Refinancing Proceeds. "Net Refinancing Proceeds" shall mean the gross principal amount of any Financing Event after the Execution Date, minus (i) the greatest of (a) the Existing Value, (b) the principal amount of Lessee's existing financing as of the Execution Date or (c) the principal amount of any subsequent refinancing by Lessee in connection with which County was paid a Net Proceeds Share, together with any portion of the proceeds of the Financing Event which shall be used for Improvement Costs, (ii) other Improvement Costs incurred by Lessee and not paid for or repaid with the proceeds of any Financing Event, and (iii) Documented Transaction Costs with respect to such Financing Event.

4.8.6. Effect of Refinancing on Improvement Costs. Upon payment to County of a Net Proceeds Share in connection with a Financing Event, then the Improvement Costs incurred by Lessee prior to such Financing Event shall be increased by the amount of New Refinancing Proceeds derived from such Financing Event and the Documented Transaction Costs in connection therewith and shall be in addition to Improvement Costs incurred by Lessee after such Financing Event.

4.8.7. Transfers to which Sections 4.6 through 4.8 Apply. The provisions of Sections 4.6 through 4.8 hereof shall apply to all transfers of beneficial interests in this Lease or a Major Sublease which constitute a Change of Ownership, unless such transfers are otherwise excluded pursuant to this Lease. Furthermore, the provisions of Sections 4.6 through 4.8 of this Lease, and the principles set forth therein, shall apply to any transfer or series of transfers which County can demonstrate was primarily structured for the purpose of avoiding the obligation to pay Net Proceeds Share set forth in Sections 4.6 through 4.8 of this Lease and which, viewed together, would otherwise constitute a Change of Ownership.

4.8.8. Payment. Net Proceeds Share shall be due and payable concurrently with the transfer giving rise to the obligation to pay such fees and shall be the joint and several obligation of the transferee and transferor. Net Proceeds Share not paid when due shall be subject to a late fee of six percent (6%) of the amount due, together with interest on such Net Proceeds Share and late fee at the Applicable Rate from the date due until paid. In the event that the proceeds of the transaction giving rise to the obligation to pay Net Proceeds Share are comprised, in whole or in part, of assets other than cash, then the cash payment of the Net Proceeds Share shall reflect the fair market value of such non-cash assets as of the date of the Change of Ownership, which shall be set forth in the Calculation Notice. Notwithstanding the foregoing, in the case of a Change of Ownership described in subsection 4.6.1(b), the Net Proceeds Share shall be payable to County as and when the Net Transfer Proceeds are received, with the Net Proceeds Share being equitably apportioned to the payments derived by Lessee from said Change of Ownership (other than any payments passed through to County under this Lease).

4.8.9. Shareholder, Partner, Member, Trustee and Beneficiary List. Prior to the Execution Date, prior to each subsequent Change of Ownership or Financing Event and upon the request of County (which requests shall be no more frequent than once per year), Lessee shall provide County with an updated schedule listing the names and mailing addresses of (i) all shareholders, partners, members and other holders of equity or beneficial interests in Lessee, this Lease or the Major Sublessee under any Major Sublease, and (ii) all shareholders, partners, members and other holders of equity or beneficial interests in any of the constituent shareholders, partners, members or other holders of equity or beneficial interests in Lessee or any Major Sublessee under any Major Sublease, if such interest exceeds a five percent (5%) or greater beneficial interest in Lessee, its constituent shareholders, partners, members or other interest holders, or the Major Sublessee under a Major Sublease. In the event that such shareholder, partner, member or other interest holder is a trust, Lessee shall include in such schedule the name and mailing address of each trustee of said trust, together with the names and mailing addresses of each beneficiary of said trust with greater than a five percent (5%) actuarial interest in distributions from, or the corpus of, said trust; provided, however, that to the extent that Lessee is prevented by Applicable Laws from obtaining such information regarding the beneficiaries of said trust(s), Lessee shall have complied with this provision if Lessee uses its best efforts to obtain such information voluntarily and provides County with the opportunity to review any such information so obtained. Lessee agrees to use its best efforts to provide County with any additional information reasonably requested by County in order to determine the identities of the holders of five percent (5%) or greater beneficial interests in Lessee or its constituent shareholders, partners, members or other interest holders, this Lease or a Major Sublease.

## 5. CONSTRUCTION OF IMPROVEMENTS.

5.1 Redevelopment Work. It is expressly understood and agreed that Lessee shall demolish the existing Improvements located on the Premises, and construct new Improvements on the Premises in accordance with the Redevelopment Plan attached to this Lease as Exhibit B, including without limitation, the following new Improvements: (i) a new commercial building (the "New Commercial Building") containing not less than 29,000 square feet of rentable area of

space to be initially allocated approximately as follows: 5,000 rentable square feet of yacht club space, 10,000 rentable square feet of health club space, 2,916 rentable square feet of retail space and 11,432 rentable square feet of marine commercial office space; (ii) an attached parking structure with 447 parking spaces or such other number of parking spaces as required under Section 15.20 below (the "Parking Structure"); (iii) complete replacement of the existing 182 boat slips and related Improvements with 108 new boat slips with an average slip length of approximately 31.25 lineal feet and related Improvements (all such boat slips and related Improvements, as approved and constructed, the "Anchorage Improvements"); and (iv) the Promenade Work described in Section 15.19 of this Lease. The demolition and construction work described in the immediately preceding sentence, along with all associated improvement, hardscape, landscape and other site work approved by County and to be performed in connection with such construction work, are herein collectively referred to as the "Redevelopment Work." The design, density, site coverage, layout and open space, view corridors, building height, construction materials, landscaping, hardscaping and other improvement specifications pertaining to the Redevelopment Work shall be subject to County's approval as set forth in this Section 5, and shall be subject to the receipt by Lessee of all Entitlements. The boat slips to be constructed as part of the Anchorage Improvements shall be constructed with concrete or such other materials as approved by the Director. Lessee shall be solely responsible for all costs and expenses incurred in connection with the design, entitlement and construction of the Redevelopment Work. Lessee shall expend not less than the Minimum Development Cost (as defined below) for the cost of the Redevelopment Work, which expenditures shall be subject to the verification and reasonable approval by County. The "Minimum Development Cost" shall mean \$13,000,000 increased by the same percentage increase (if any) in the ENR Index from April, 2005 through the date of the commencement of construction of the Redevelopment Work. Lessee shall comply with all time deadlines and schedules set forth in this Section 5 relating to the completion of the design and construction of the Redevelopment Work. Lessee's failure to do so shall, if not cured within the applicable cure set forth in subsection 13.1.2, constitute an Event of Default.

5.2 Schematics and Narrative. If, and to the extent, not completed by Lessee prior to the Effective Date in accordance with Section 4.3 of the Option Agreement, Lessee shall submit to the Director six (6) sets of schematic plans together with a narrative description and construction cost estimate summary clearly delineating the nature, size, configuration and layout of any and all Improvements to be constructed, altered or modified on the Premises as part of the Redevelopment Work. Such plans shall, among other things, clearly delineate the architectural theme or motif of the Improvements and shall identify and illustrate the boundaries of the Premises and all rights-of-way or other areas reserved to County or third parties which are located thereon. The schematic plans and other materials required to be submitted by Lessee after the Effective Date pursuant to this Section 5.2 (i.e., not including those required to be submitted by Lessee during the Option Term pursuant to Section 4.3 of the Option Agreement) shall be submitted by Lessee to Director in accordance with a schedule that facilitates Lessee's completion of the Redevelopment Work on or before the Required Completion Date (subject to any extension thereof permitted hereunder) set forth in Section 5.7 below (taking into consideration the other plan submittal and approval periods set forth in this Lease). Director shall have sixty (60) days within which to approve or disapprove Lessee's submission under this Section 5.2. Failure of Director to approve such submission in writing within said sixty (60) day period shall be deemed disapproval of said submission. After approval of schematic plans (or



subsequent approval of Preliminary or Approved Final Plans, Specifications and Costs, as defined herein) by Director, if changes in such plans are required by conditions of approval of the Improvements imposed by the California Coastal Commission or other governmental agency having jurisdiction thereover, Lessee shall promptly advise Director in writing of such changes and Director shall not disapprove the changes required by the California Coastal Commission or other governmental agency, as appropriate, unless such changes materially prejudice County's ability to enjoy the rights and benefits granted to County pursuant to this Lease.

5.3 Preliminary Plans and Specifications. If, and to the extent, not completed by Lessee prior to the Effective Date in accordance with Section 4.3 of the Option Agreement, Lessee shall submit to Director six (6) sets of preliminary plans, outline specifications and construction cost estimates for the Improvements set forth therein. The preliminary plans, outline specifications and construction cost estimate shall conform to, expand upon and reflect a natural evolution from the descriptions and estimates set forth in the approved schematic plans and narrative. Any difference in the scope, size, configuration, arrangement or motif of the Improvements from those described in the approved schematics and narrative shall be separately identified and described. The preliminary plans, outline specifications and construction cost estimates required to be submitted by Lessee after the Effective Date pursuant to this Section 5.3 (i.e., not including those required to be submitted by Lessee during the Option Term pursuant to Section 4.3 of the Option Agreement) shall be submitted by Lessee to Director in accordance with a schedule that facilitates Lessee's completion of the Redevelopment Work on or before the Required Completion Date set forth in Section 5.7 below (taking into consideration the other plan submittal and approval periods set forth in this Lease). Director shall have twenty-one (21) days within which to approve or reasonably disapprove Lessee's submission under this Section 5.3, and Director may disapprove said preliminary plans on the grounds that they do not reflect a natural evolution from the approved schematic plans or that they materially differ from the approved schematic plans and narrative. Failure of Director to disapprove said preliminary plans within twenty one (21) days after Director's receipt thereof shall be deemed Director's approval thereof; provided, however, that in the event that the preliminary plans, outline specifications and construction cost estimates contain substantial changes from the approved schematics and narrative, then Director shall have sixty (60) days in which to approve said submission, which approval shall be deemed withheld if not granted in writing within such sixty (60) day period; and provided further, that together with the submission of the preliminary plans, outline specifications and construction cost estimates, Lessee must deliver to Director a transmittal letter containing the following text prominently displayed in bold faced type:

**"PURSUANT TO SECTION 5.3 OF THE AMENDED AND RESTATED LEASE AGREEMENT, IF THESE MATERIALS CONTAIN NO SUBSTANTIAL CHANGES FROM THE MATERIALS PREVIOUSLY SUBMITTED TO YOU, YOU HAVE TWENTY ONE (21) DAYS AFTER RECEIPT OF THESE MATERIALS IN WHICH TO APPROVE OR DISAPPROVE THEM. FAILURE TO DISAPPROVE THESE MATERIALS IN WRITING WITHIN TWENTY ONE (21) DAYS OF YOUR RECEIPT OF THESE MATERIALS SHALL CONSTITUTE YOUR APPROVAL OF THEM."**

5.4 Final Plans and Specifications. If, and to the extent, not completed by Lessee prior to the Effective Date in accordance with Section 4.3 of the Option Agreement, Lessee shall

submit for approval by Director six (6) complete sets of final plans, detailed specifications and a construction cost statement for all Improvements to be constructed, altered or modified by Lessee on the Premises, together with one (1) set of appropriate structural computations, identical to those requested or required by the County Director of Public Works incident to the issuance of building permits under the relevant provisions of the Los Angeles County Building Code. Lessee shall file duplicate copies of the final plans, detailed specifications and construction cost statement required by this Section with the County Director of Public Works, together with the necessary and appropriate applications for building permits. Any difference in the scope, size, configuration, arrangement or motif of the Improvements from those described in the approved preliminary plans and specifications shall be separately identified and described. The final plans and other materials required to be submitted by Lessee after the Effective Date pursuant to this Section 5.4 (i.e., not including those, if any, required to be submitted by Lessee during the Option Term pursuant to Section 4.3 of the Option Agreement) shall be submitted by Lessee to Director in accordance with a schedule that facilitates Lessee's completion of the Redevelopment Work on or before the Required Completion Date set forth in Section 5.7 below, taking into consideration the Director's approval periods set forth in Section 5.5.1 below.

5.5 Conditions Precedent to the Commencement of Construction. No construction, alteration or modification by Lessee of any Improvements on the Premises shall be commenced until each and all of the following conditions have been satisfied:

5.5.1. Approval of Final Plans and Specifications. The final plans, detailed construction specifications and construction cost statement described in Section 5.4 for the Improvements have been approved by Director ("Approved Final Plans, Specifications and Costs"), which approval shall not be unreasonably withheld provided that the final plans and specifications reflect a natural progression and logical evolution from the approved preliminary plans and specifications. Director shall have twenty one (21) days within which to approve or disapprove such submission, and Director may disapprove such submission on the grounds that they do not reflect a natural evolution from or that they materially differ from the approved preliminary plans, outline specifications and construction cost estimates. Failure of Director to disapprove said preliminary plans within twenty one (21) days after Director's receipt shall be deemed Director's approval thereof; provided, however, that in the event that the final plans, detailed construction specifications and construction cost statement contain substantial changes from the preliminary plans, outline specifications and construction cost estimates, then Director shall have sixty (60) days in which to approve said submission, which approval shall be deemed withheld if not granted in writing within such sixty (60) day period; and provided further, that together with the submission of the final plans, detailed construction specifications and construction cost statement, Lessee must deliver to Director a transmittal letter containing the following text prominently displayed in bold faced type:

**"PURSUANT TO SECTION 5.5.1 OF THE AMENDED AND RESTATED  
LEASE AGREEMENT, IF THESE MATERIALS CONTAIN NO  
SUBSTANTIAL CHANGES FROM THE MATERIALS PREVIOUSLY  
SUBMITTED TO YOU, YOU HAVE TWENTY ONE (21) DAYS AFTER  
RECEIPT OF THESE MATERIALS IN WHICH TO APPROVE OR**

DISAPPROVE THEM. FAILURE TO DISAPPROVE THESE MATERIALS IN WRITING WITHIN TWENTY ONE (21) DAYS OF YOUR RECEIPT OF THESE MATERIALS SHALL CONSTITUTE YOUR APPROVAL OF THEM.”

Director’s approval shall not be unreasonably withheld; provided, however, that it shall be deemed reasonable to disapprove any submission not in substantial conformity with the approved preliminary plans and specifications. No material modification shall be made to the Improvements described in the Approved Final Plans, Specifications and Costs without the prior written approval of Director, which shall not be unreasonably withheld.

5.5.2. Permits and Other Approvals. Lessee shall have received and furnished County with copies of all permits, licenses and other governmental approvals necessary to construct the Improvements described in the Approved Final Plans, Specifications and Costs. Lessee agrees to apply for all such permits, licenses and other governmental approvals at the earliest commercially reasonable time and thereafter shall use diligent efforts (which shall be deemed to include expenditures of funds, including without limitation application fees, travel, architectural, consulting and lobbying fees, as reasonably necessary to expedite the permit, license or other approval process) to procure such permits, licenses and other approvals at the earliest reasonably possible time.

5.5.3. Copies of Construction Contracts. Lessee shall have furnished County with copies of any contract(s) entered into between Lessee and any general contractor(s) employed for the purpose of constructing the Improvements described in the Approved Final Plans, Specifications and Costs.

5.5.4. Performance and Payment Bonds. Lessee shall, at its own cost and expense, have furnished County with the following separate corporate surety bonds not less than ten business (10) days prior to the commencement of construction, which bonds must be in form and content reasonably satisfactory to County or with other security for the construction of the Improvements as set forth in subsection 5.5.5 below:

5.5.4.1.A corporate surety performance bond (“Performance Bond”) issued by a surety company licensed to transact business as such in the State of California, in an amount not less than one hundred percent (100%) of the amount of all hard construction costs approved by County in conjunction with the Approved Final Plans, Specifications and Costs. The Performance Bond and its issuer shall be in all material respects reasonably satisfactory to County. It shall name Lessee as principal and said issuer as surety, and County as obligee, assuring full and satisfactory performance by Lessee of Lessee’s obligations herein to build, construct and otherwise complete the Improvements described in the Approved Final Plans, Specifications and Costs.

5.5.4.2.A corporate surety payment bond, issued by a surety company licensed to transact business as such in the State of California, with Lessee as principal, said company as surety and County as obligee, in a sum equal to one hundred percent (100%) of the total construction cost set forth in the Approved

Final Plans, Specifications and Costs, guaranteeing payment for all materials, provisions, supplies and equipment used in, upon, for or about the performance of said construction work or for labor done thereon of any kind whatsoever and protecting County from any and all liability, loss or damages arising out of or in connection with any failure to make such payment (the "Payment Bond"). The Payment Bond shall be in form and content reasonably satisfactory to County.

In the event that construction is performed by a licensed general contractor on behalf of Lessee, provided that such contractor provides County with a bond or bonds compliant with this subsection, and in all material respects reasonably satisfactory to County and otherwise complying with this subsection, County will accept such contractor's bonds in lieu of the Performance Bond and/or Payment Bond by Lessee required by this subsection 5.5.4.

5.5.5. Alternative Security. In lieu of providing the Payment and Performance Bonds, Lessee may (i) deposit a Certificate of Deposit with County or post an additional Letter of Credit in favor of County, equal in amount to one hundred percent (100%) of the construction contract price, which may be drawn upon by County to complete the construction of the Improvements if same have not been completed by Lessee or if an Event of Default has occurred under this Lease, or (ii) provide a payment and performance guaranty from an individual or entity acceptable to County and in form and substance acceptable to County, which guaranty shall guaranty (I) the Lessee's obligation to complete the Improvement described in the Approved Final Plans, Specifications and Costs, and (II) the payment for all materials, provisions, supplies and equipment used in, upon, for or about the performance of said construction work and for labor performed in connection therewith. A condition precedent to Lessee's right to provide the alternative security described in this Section 5.5.5 shall be delivery by Lessee to County of an opinion of counsel from a firm and in a form acceptable to County to the effect that the construction of the Improvements does not constitute a public work of improvement requiring the delivery of the bonds described in Section 5.5.4 above.

5.5.6. Evidence of Financing. Lessee shall have provided evidence satisfactory to County of its having sufficient financial resources, as determined by Director, to complete the Improvements as set forth in the Approved Final Plans, Specifications and Costs. Lessee shall furnish Director with copies of all final notes, guarantees, partnership, shareholder or limited liability company agreements, construction loan and/or permanent loan commitments, documents evidencing equity contributions, documents creating and/or perfecting security interests, and all documents and exhibits referred to in any of the foregoing, together with any and all recorded documents affecting an interest in the Premises, within seven (7) days after such document or instrument becomes effective.

5.5.7. Work Schedule. Lessee shall have provided County with a construction schedule reasonably acceptable to Director. Such construction schedule for the Redevelopment Work shall be consistent with the completion of the Redevelopment Work, as set forth in the Approved Final Plans, Specifications and Costs, on or before the Required Completion Date set forth in Section 5.7 below, as such date may be extended as provided in this Article 5.

5.6 County Cooperation. In its proprietary capacity, the Department shall cooperate with and assist Lessee, to the extent reasonably requested by Lessee, in Lessee's efforts to obtain the appropriate governmental approvals, consents, permits or variances which may be required in connection with the performance by Lessee of the Redevelopment Work. Such cooperative efforts may include the Department's joinder in any application for such approval, consent, permit or variance, where joinder therein by the Department is required or helpful; provided, however, that Lessee shall reimburse County for the Actual Cost incurred by the Department in connection with such joinder or cooperative efforts. Notwithstanding the foregoing, Lessee and County acknowledge that the approvals given by County under this Lease are approvals pursuant to its authority under Sections 25536 and 25907 of the California Government Code; that approvals given under this Lease in no way release Lessee from obtaining, at Lessee's expense, all permits, licenses and other approvals required by law for the construction of Improvements on the Premises and operation and other use of such Improvements on the Premises; and that the Department's duty to cooperate and County's approvals under this Lease do not in any way modify or limit the exercise of County's governmental functions or decisions as distinct from its proprietary functions pursuant to this Lease.

5.7 Construction Schedule.

5.7.1. Substantial Commencement of Construction. It is a condition of this Lease that, except to the extent Lessee is prevented from so doing by the events identified in subsection 5.7.3, Lessee shall cause the Substantial Commencement of Construction of the Redevelopment Work to have occurred in accordance with the Approved Final Plans, Specifications and Costs by the date therefore set forth in the construction schedule approved by Director pursuant to Section 5.5.7 above, and shall substantially complete the Redevelopment Work by not later than the fifth (5<sup>th</sup>) anniversary after the Effective Date (the "Required Completion Date"). For the purposes of this Lease, "Substantial Commencement" or "Substantial Commencement of Construction" shall mean that all demolition and excavation work required in connection with the Redevelopment Work has been completed and the construction of the new Improvements to be constructed as part of the Redevelopment Work has been commenced. The required date for the Substantial Commencement of Construction and the Required Completion Date will only be extended under the specific circumstances set forth in subsection 5.7.3, and under no other circumstances. Notwithstanding the foregoing, the parties hereto specifically agree that so long as Lessee is otherwise diligently and in good faith attempting to satisfy the condition set forth in the first sentence of this subsection 5.7.1, and as long as it would have been extremely unlikely that any other developer could have caused the subject Improvements to be Substantially Commenced and/or completed within such timeframe, then Lessee will not be in breach of this subsection for its failure to achieve Substantial Commencement by the required date set forth herein or completion of the Redevelopment Work by the Required Completion Date.

5.7.2. After Substantial Commencement. Once construction of the Improvements set forth in the Approved Final Plans, Specifications and Costs has been Substantially Commenced, Lessee shall thereafter diligently pursue the completion of such construction by the Required Completion Date in substantial compliance with the Approved Final Plans, Specifications and Costs. Completion of construction of the

Improvements following Substantial Commencement will be extended only under the specific circumstances set forth in subsection 5.7.3 and under no other circumstances.

5.7.3. Extension of Dates. The required date for the Substantial Commencement of Construction and the Required Completion Date shall be extended only for the reasons set forth in this subsection 5.7.3. In the event Lessee has not met the condition set forth in the first sentence of subsection 5.7.1 (subject to the last sentence of subsection 5.7.1 and subject to any extension granted pursuant to this subsection 5.7.3), then at County's option this Lease shall be amended such that the terms and provisions of this Lease revert back to the terms and provisions of the Original Lease (including, without limitation, the Original Term), as modified by the "Non-Exercise Amendment" described in the Option Agreement (the "Reversion Amendment").

5.7.3.1. Injunction by Third Party, Nonregulatory Body. The required date for the Substantial Commencement of Construction shall be extended if the construction of the Improvements is the subject of (i) a then current judicial or administrative action, brought by a person or entity (other than Lessee or any affiliate of Lessee, or the County or the California Coastal Commission acting in their governmental capacity) that appeals or otherwise challenges the previous issuance of Entitlements for the Improvements, or seeks to enjoin, restrain, contest or otherwise limit the right of Lessee to construct the Improvements, or (ii) a temporary restraining order ("TRO") or injunction issued in connection therewith. In such case, the required date for the Substantial Commencement of Construction shall be extended until the dismissal, removal or other resolution of any such action or order, and the lapse of any applicable appeal period. Lessee shall diligently pursue the dismissal, removal or other resolution of any such action, TRO, injunction, judgment or order so issued and shall exhaust all commercially reasonable efforts to appeal any adverse TRO, injunction, judgment or order, and any extension of the required date for the Substantial Commencement of Construction shall be expressly conditioned upon such Lessee diligence. In the event that a permanent injunction, order or settlement prohibiting the construction of the Improvements becomes final and is no longer subject to appeal, then, at County's or Lessee's option, this Lease shall be amended in accordance with the Reversion Amendment.

5.7.3.2. Delay Caused by Unreasonable County Acts. The required date for the Substantial Commencement of Construction shall be extended if Lessee has been delayed in the obtaining of any permits or other approvals necessary for the commencement of construction of the Improvements set forth in the Approved Final Plans, Specifications and Costs due to Unreasonable County Activity. For the purposes of this Lease, the following shall be deemed to be "Unreasonable County Activity": County's failure to provide required joinder, if any, in Lessee's proposals for the Improvements described in the Approved Final Plans, Specifications and Costs before any governmental agency; or, County's failure to take such other actions in its proprietary capacity reasonably requested by Lessee, at no cost or expense to County, which are necessary for Lessee to proceed with the permit/approval process or County's having taken such actions without

Lessee's consent which adversely affected Lessee's rights and obligations hereunder, which were unreasonable and which actually delayed the Substantial Commencement of Construction and which action or inaction occurred after the date hereof. Nothing contained in this Section or this Lease shall be construed as obliging County to support proposals, issue permits, or otherwise act in a manner inconsistent with County's actions under its regulatory powers. It shall not be Unreasonable County Activity if County fails to accelerate the County's customary regulatory permit/approval process. An extension shall be available under this subsection only if all of the following procedures have been followed:

(i) Within a reasonable time under the circumstances, but in no event to exceed three (3) days after Lessee's discovery of any alleged Unreasonable County Activity, Lessee must notify Director in writing of the specific conduct comprising the alleged Unreasonable County Activity, and the next opportunity, if any, for County to rectify such alleged conduct.

(ii) Within seven (7) days following receipt of the notice alleging Unreasonable County Activity, Director shall meet with Lessee or its authorized representative in order to determine whether Unreasonable County Activity has occurred and, if so, how such Unreasonable County Activity can be rectified and the appropriate length of time of any extension pursuant to this subsection. If Director determines that Unreasonable County Activity has occurred and that County can and will take rectifying action, then the extension time shall equal the amount of actual delay directly caused by the Unreasonable County Activity. If Director determines that Unreasonable County Activity has occurred, but that County cannot take rectifying action (or if the proposed rectifying action will not produce the results desired by Lessee), then Lessee and Director shall establish the length of time of any extension based on the actual delay of the permit/approval process likely to be caused by the Unreasonable County Activity.

(iii) If, within fourteen (14) days following receipt of notice alleging Unreasonable County Activity, Director and Lessee have not agreed in writing as to whether or not an extension is appropriate, or if appropriate, the length of any such extension, then the matter shall be referred to binding arbitration in accordance with Article 16 of this Lease. The arbitrator shall be instructed that, if Unreasonable County Activity has occurred, then the standards set forth in subsection (b) above will be applied to determine the length of any extension.

The period of any extension pursuant to this subsection shall be equal to the period of the delay caused by the Unreasonable County Activity.

5.7.3.3.Delay in Obtaining Permits or Approvals. Except as otherwise provided in subsection 5.7.3.5, if as of the required date for the Substantial Commencement of Construction (as it may be extended as provided above), Lessee has not obtained a permit or other approval necessary to the

commencement of construction from a regulatory body or agency other than County, or such regulatory body has obtained an injunction preventing the commencement of construction, and such permits, approvals or the removal of such injunction constitute(s) the major remaining impediment to the commencement of construction, then the required date for the Substantial Commencement of Construction shall be extended to thirty (30) days after the date upon which such permit is issued or injunction dissolved, provided that (1) Lessee has exhausted and continues to exhaust all commercially reasonable efforts to obtain such approval or permit or dissolution of such injunction, and (2) such extended required date for the Substantial Commencement of construction shall not be extended for more than two (2) years. If the required date for the Substantial Commencement of construction is so extended, then the Required Completion Date shall be extended by the same number of days that the required date for the Substantial Commencement of construction was extended. The extension provided by this subsection shall be the only extension available in a situation where such permits and/or approvals have not been issued or such regulatory body or agency has obtained such an injunction.

5.7.3.4. Force Majeure. Notwithstanding any contrary provision hereof, any date by which Lessee is required to satisfy an obligation under this Article 5, including, without limitation, the Substantial Commencement of Construction by the date required herein and the completion of the Redevelopment Work by the Required Completion Date, shall be extended for delays in the ability of Lessee to comply therewith as a result of fire, earthquake, flood, tornado or other casualty, acts of God, civil riots or disturbance, embargo, war, acts of terrorism, industry wide strike or labor dispute or other unforeseeable event reasonably beyond the control of Lessee ("Force Majeure"); provided, however, that Lessee shall commence and complete the portions, if any, of the Improvements not impacted by such delay within the timeframe set forth in this Lease. Lessee and Director shall discuss and attempt to agree on the length of time of any Force Majeure delay. If they are unable to agree within thirty (30) days after the event or occurrence giving rise to Lessee's claim to a Force Majeure delay under this subsection 5.7.3.4, the matter shall be arbitrated as set forth in Article 16. In no event shall any extensions of any dates under this subsection 5.7.3 exceed two (2) years in the aggregate for any or all of the reasons set forth in this subsection 5.7.3.

5.7.3.5. Limitation of Extensions. Notwithstanding the foregoing, Lessee shall not be entitled to any extension under this subsection 5.7.3 unless Lessee had actually been pursuing the process of obtaining all permits, approvals, financing and other items necessary for the Substantial Commencement of Construction with due diligence, and unless all Improvements specified and plans and specifications submitted by Lessee in connection with any such permit, approval, financing or other item substantially conformed to (i) the Approved Final Plans, Specifications and Costs, and (ii) the land use laws and regulations and the Local Coastal Plan existing as of the date of execution of this Lease by Lessee.



5.7.3.6. No Effect on Rent. Notwithstanding anything to the contrary contained in this Lease, no extension, relaxation or modification of the requirement to Substantially Commence construction of the Improvements by the date required hereunder and complete such Improvements by the Required Completion Date, shall relieve Lessee of its obligation to pay County the Annual Minimum Rent, Percentage Rent and other amounts set forth in Article 4 of this Lease.

5.7.4. Failure to Reach Substantial Commencement. Lessee agrees that the primary purpose for County having entered into this Lease is to provide the public with the opportunity to enjoy the Improvements described in the Approved Final Plans, Specifications and Costs at the earliest practicable date. Therefore, it is understood and agreed that the time periods and requirements for extensions contained in Sections 5.2 through 5.7 shall be strictly enforced and should Lessee, or any party claiming through Lessee, fail to meet the conditions for Substantial Commencement of Construction within the terms of Sections 5.2 through 5.7, then at County's option this Lease shall be amended in accordance with the Reversion Amendment.

5.8 Manner of Construction.

5.8.1. General Construction Standards. All construction, alteration, modification or repairs permitted herein shall be accomplished by Lessee with due diligence. Lessee shall take all reasonable steps to minimize any damage, disruption or inconvenience caused by such work and make adequate provisions for the safety and convenience of all persons affected thereby. Lessee shall repair, at its own cost and expense, any and all damage to areas outside of the Premises caused by such work, and shall restore any such damaged areas to a condition which is at least equal to or better than the condition which existed before such work was commenced. Additionally, Lessee shall pay or cause to be paid all costs and expenses associated therewith and shall indemnify, defend and hold County harmless from and against all damages, costs, expenses, losses or claims arising out of or in connection with the performance of such work, except to the extent that such damages, costs, expenses, losses or claims are caused by County. Dust, noise and other effects of such work shall be controlled using accepted measures customarily utilized in order to control such deleterious effects associated with construction projects in well populated and developed areas of southern California.

5.8.2. Utility Work. Any work performed by or on behalf of Lessee or any occupant of the Premises to connect to, repair, relocate, maintain or install any storm drain, sanitary sewer, water line, gas line, telephone conduit, or any other utility service shall be performed in a manner that minimizes interference with the provision of such services to the Premises and other persons.

5.8.3. Construction Safeguards. Lessee shall erect and properly maintain at all times, as required by the conditions and the progress of work performed by or on behalf of Lessee, all necessary safeguards for the protection of workers and the public.

5.8.4. Compliance with Construction Documents and Laws; Issuance of Permits.

All Improvements on the Premises shall be completed in substantial compliance with any construction documents approved by County and also in compliance with all applicable local, state and federal laws and regulations. Lessee shall have the sole responsibility for obtaining all necessary permits and shall make application for such permits directly to the person or governmental agency having jurisdiction thereover.

5.8.5. Notice to Director; Damage to County Improvements.

Lessee further agrees to keep Director apprised of the progress of the work to the end that Director may timely inspect the Premises to assure proper safeguarding of any County-owned improvements existing on or around the Premises, including but not limited to seawalls, underground conduits and utility lines. If any such County-owned improvement is damaged in connection with said construction activity, Lessee agrees to repair such damage immediately at no cost or expense to County or, in the event that Lessee fails to effectuate such repair within five (5) business days after written notice from County (or such longer period as may be reasonably required to complete such repair so long as Lessee commences such repair within five (5) business days and thereafter diligently prosecutes same to completion), County may enter upon the Premises to make such repairs, the Actual Cost of which shall be paid by Lessee within two (2) business days after demand by County.

5.8.6. Rights of Access.

Representatives of the Department of Beaches and Harbors of the County shall, upon reasonable notice and at reasonable times, have the right of reasonable access to the Premises and the Improvements thereon without charges or fees, but at no cost or expense to Lessee, for the purpose of ascertaining compliance with the terms and conditions of this Lease, including but not limited to the inspection of the construction work being performed. Such access shall be reasonably calculated to minimize interference with Lessee's construction and/or operations. Lessee shall have the right to have a representative present to accompany the representatives of the Department of Beaches and Harbors of the County in connection with such access. In the event of any emergency which is life-threatening or which involves the threat of potential substantial damage, County shall have the right to enter the Premises immediately and without notice to or accompaniment by Lessee.

5.8.7. Notice of Completion.

Upon completion of the Improvements, as set forth in the Approved Final Plans, Specifications and Costs, Lessee shall file or cause to be filed in the Official Records of the County of Los Angeles a Notice of Completion (the "Notice of Completion") with respect to such Improvements and Lessee shall deliver to County, at no cost to County, two (2) sets of conoflex or mylar final as-built plans and specifications of such Improvements.

5.9 Use of Plans.

Contracts between Lessee and any architect, design professional or licensed contractor in connection with the construction, alteration or modification of Improvements on the Premises shall provide, in form and content reasonably satisfactory to County, for the assignment thereof to County as security to County for Lessee's performance hereunder, and County shall be furnished with a copy of any such contract, together with the further agreement of the parties thereto, that if this Lease is terminated by County due to

Lessee's default, County may, at its election, use any plans and specifications created by such architect, design professional or contractor in connection with the contract, upon the payment of any sums due to any party thereto. County's right to elect to use plans and specifications as described above shall not include the unauthorized right to use any trade marks, trade names or logos of Lessee or any such architect, design professional or contractor.

5.10 Additional Construction. Lessee may, at its own expense, make or construct, or cause to be made or constructed, Improvements during the Term in addition to the Redevelopment Work, including such alterations, modifications or changes to Improvements as Lessee may desire; provided, however, that all such additional Improvements, and all alterations, modifications or changes to Improvements shall be (i) consistent with, and within the scope of, the Permitted Uses set forth in Article 3, (ii) first approved in writing by the Director, except as otherwise provided in Section 5.11 below, which approval shall not be unreasonably withheld, conditioned or delayed, and (iii) made in accordance and compliance with all terms and provisions set forth in Sections 5.2 through 5.5 (other than as provided in Section 5.11), and Sections 5.8, 5.9 and 5.12. Lessee acknowledges that, except to the extent set forth in a prior written approval or agreement by Director or County, Director may refuse permission for the construction of any proposed Improvement, addition, alteration, modification or change, and such decision, if reasonable, will be final and binding upon Lessee. Lessee acknowledges that such proposed Improvement, addition, alteration, modification or change will also be subject to other governmental requirements and conditions, including those of the California Coastal Commission and other governmental authorities that may have jurisdiction.

5.11 Where Director Approval Not Required. Notwithstanding the foregoing, and notwithstanding anything to the contrary in this Article 5, Lessee shall not be required to seek or obtain the approvals of Director described in this Article 5 (including those set forth in Sections 5.2 through 5.5) where all of the following conditions are satisfied: (1) none of the proposed construction activity is structural in nature; (2) none of the proposed construction, additions, modifications or changes affect or are visible from the exterior of the Premises; (3) the proposed construction, additions, modifications or changes will not lessen the value of the Improvements; and (4) the Improvements will remain in compliance with the Permitted Uses; provided, however, that whenever Lessee makes or constructs or permits any Improvements in or to the Premises, Lessee shall (i) give written notice thereof (including a description of the work to be done and the permits obtained for such work), and (ii) furnish a copy of "as-built" plans upon completion of such work to County.

5.12 Protection of County. Nothing in this Lease shall be construed as constituting the consent of County, express or implied, to the performance of any labor or the furnishing of any materials or any specific Improvements, alterations or repairs to the Premises of any part thereof by any contractor, subcontractor, laborer or materialman, nor as giving Lessee or any other person any right, power or authority to act as agent of or to contract for, or permit the rendering of, any services, or the furnishing of any materials, in any such manner as would give rise to the filing of mechanics' liens or other claims against the Premises or County.

5.12.1. Posting Notices. County shall have the right at all reasonable times and places to post and, as appropriate, keep posted, on the Premises any notices which County may deem necessary for the protection of County, the Premises and the

Improvements thereon from mechanics' liens or other claims. Lessee shall give County at least ten (10) business days prior written notice of the commencement of any work to be done on the Premises, in order to enable County timely to post such notices.

5.12.2. Prompt Payment. Lessee shall make, or cause to be made, prompt payment of all monies due and owing to all persons doing any work or furnishing any materials or supplies to Lessee or any of its contractors or subcontractors in connection with the Premises and the Improvements thereon. Lessee shall have the right to contest any such amount; provided, however, the entire expense of any such contest (including interest and penalties which may accrue) shall be the responsibility of Lessee.

5.12.3. Liens; Indemnity. Subject to Lessee's rights to contest the same prior to payment, Lessee shall keep the Premises and any Improvements thereon free and clear of all mechanics' liens and other liens arising out of or in connection with work done for Lessee and/or any parties claiming through Lessee. Lessee agrees to and shall indemnify, defend and hold County harmless from and against any claim, liability, loss, damages, costs, expenses, attorneys' fees incurred in defending and all other expenses on account of claims of lien(s) of laborers or materialmen or others for work performed or materials or supplies furnished to Lessee or persons claiming under it.

In the event any lien is recorded, Lessee shall, within five (5) business days after demand, furnish the bond described in California Civil Code Section 3143, or successor statute, which results in the removal of such lien from the Premises, together with any other evidence requested by County to evidence that such claim will be paid, removed or discharged as a claim against the Premises and/or County.

5.13 Capital Improvement Fund. Commencing with the first calendar month following the third (3<sup>rd</sup>) anniversary of the Completion Date and continuing through the end of the Term, Lessee shall establish and maintain a reserve fund (the "Capital Improvement Fund") in accordance with the provisions of this Section 5.13 for the cost of capital renovations to the Premises and Improvements, other than the Anchorage Improvements. Lessee and County agree and acknowledge that the purpose of the Capital Improvement Fund shall be to provide funds for the ongoing revitalization of the Improvements on the Premises through the replacement, renovation, rehabilitation, upgrading, addition and installation of physical Improvements to the Premises after the completion of the Redevelopment Work. The Capital Improvement Fund shall be used only for Permitted Capital Expenditures. "Permitted Capital Expenditures" shall mean expenditures by Lessee for an addition, replacement, renovation or significant upgrade of or to the buildings on the Premises, including building exteriors or major building systems (such as HVAC, mechanical, electrical, plumbing, vertical transportation, security, communications, structural or roof), that significantly increase the capacity, efficiency, useful life or economy of operation of the buildings or their major systems, as applicable. Permitted Capital Expenditures do not include periodic, recurring or ordinary expenditures, repairs or replacements that keep the Improvements in an orderly efficient operating condition, but that do not significantly add to their value or appreciably prolong their useful life good. Permitted Capital Expenditures must be for items that are considered capital replacements, improvements and equipment under generally accepted accounting principles, consistently applied. All purposes and costs for which Lessee desires to utilize amounts from the Capital Improvement Fund shall be subject to Director's

approval, which approval shall not be unreasonably withheld. Notwithstanding any contrary provision hereof, no portion of the Capital Improvement Fund shall be used for the Redevelopment Work, the Renovation Requirement described in Section 5.15 below, or for any Anchorage Improvement purposes, including without limitation, the Anchorage Improvements replacement work described in Section 5.14 below.

The Capital Improvement Fund shall be an account established with a reputable financial institution (including Lessee's Encumbrance Holder) acceptable to Director into which deposits shall be made by Lessee (and/or into which Lessee's Encumbrance Holder shall provide funds) pursuant to this Section 5.13. The amounts to be added to the Capital Improvement Fund shall be inclusive of amounts required to be deposited with and held by an Encumbrance Holder, provided that the Encumbrance Holder acknowledges that such amounts are subject to the requirements and shall be made available for the purposes of this Section 5.13. Lessee shall commence deposits to the Capital Improvement Fund on the first calendar month following the third (3<sup>rd</sup>) anniversary of the Completion Date. The Capital Improvement Fund deposits shall be made on or before the fifteenth (15<sup>th</sup>) day of each calendar month based on Gross Receipts for the immediately preceding month. During the first two years that Lessee is required to make Capital Improvement Fund deposits, each monthly deposit shall be an amount equal to one percent (1.0%) of Gross Receipts for the preceding calendar month. During the next five (5) years, each monthly deposit shall be an amount equal to one and one quarter percent (1.25%) of Gross Receipts for the preceding calendar month. Thereafter, and continuing during the remaining Term of the Lease, each monthly deposit shall be an amount equal to one and one half percent (1.50%) of Gross Receipts for the preceding calendar month. All interest and earnings on the Capital Improvement Fund shall be added to the Capital Improvement Fund and held in accordance with the provisions of this Section 5.13, but shall not be treated as a credit against the Capital Improvement Fund deposits required to be made by Lessee pursuant to this Section 5.13.

Disbursements shall be made from the Capital Improvement Fund only for costs which have been approved by Director and which satisfy the requirements of this Section 5.13. If Lessee desires to obtain advance approval from Director for Capital Improvement Fund disbursements on an annual basis, Lessee shall have the right to submit to Director on an annual basis a renovation plan for the upcoming year which details the amount and purpose of anticipated Capital Improvement Fund expenditures for which Lessee requests Director's advance approval, which approval shall not be unreasonably withheld. Any anticipated expenditure set forth in such renovation plan which is approved by Director as an acceptable Capital Improvement Fund disbursement shall be considered pre-approved by Director (but only up to the amount of such expenditure set forth in the annual renovation plan) for the duration of the upcoming year. Lessee shall have the right during the course of each year to submit to Director for Director's approval revisions to the then current renovation plan in effect for such year or individual expenditures not noted on any previously approved renovation plan for such year. Prior to the disbursement of any amounts from the Capital Improvement Fund, Lessee shall furnish to Director applicable invoices, evidence of payment and other back-up materials reasonably acceptable to Director concerning the use of amounts from the Capital Improvement Fund. Funds in the Capital Improvement Fund must be used for Permitted Capital Expenditures from time to time during the Term of the Lease.

As of the date that is ten (10) years prior to the expiration of the Term of the Lease, all (or substantially all) of the amounts required to have been deposited in the Capital Improvement Fund prior to such date shall have been expended for Permitted Capital Expenditures. Capital Improvement Fund deposits made after such date shall continue to be used for Permitted Capital Expenditure purposes under this Section 5.13; provided, however, if County elects to have Lessee remove the Improvements from the Premises at the end of the Term pursuant to subsection 2.4.2 of this Lease, then Lessee shall thereafter have the right to apply future deposits under this Section 5.13 to fund the security required for such removal costs as provided in subsection 2.4.2 if and to the extent that deposits under this Section 5.13 are not thereafter required for Capital Improvement Fund purposes.

**5.14 Replacement of Anchorage Facilities.** During the period between the thirtieth (30th) and thirty-fifth (35th) anniversaries of the Effective Date, Lessee shall commence and complete the replacement, at Lessee's cost, of all of the Anchorage Improvements with new Anchorage Improvements. The new Anchorage Improvements shall be of a first-class and state of the art quality as of the date of such replacement, and shall comply with (i) the then most recent edition of Policy Statement No. 25 and the Specifications and Minimum Standards of Architectural Treatment and Construction for Marina del Rey, as modified by County or the Department from time to time in a manner consistent with commercially reasonable standards applicable to other comparable commercial projects and marina facilities in Marina del Rey (or such similar successor policy statement or publication then in effect), (ii) the then most recent edition of Layout and Design Guidelines for Small Craft Facilities issued by the California Department of Boating and Waterways (or such similar successor publication then in effect), and (iii) design memoranda as provided by the Harbor Engineer of the Los Angeles County Department of Beaches and Harbors. The construction of such replacement Anchorage Improvements shall be performed in accordance with and be subject to the requirements imposed upon Lessee under this Article 5 with respect to the making of Alterations.

**5.15 Renovation Requirement.** During the period between September 1, 2034 and August 31, 2036, Lessee shall be required to complete a renovation of the Improvements (the "Renovation Requirement"). The Renovation Requirement shall consist of such renovation and construction work as necessary in the reasonable judgment of Director to reposition the Improvements to a condition and appearance at least equal to other then-existing commercial projects in Marina del Rey (taking into consideration renovations then being made or required to be made within three (3) years thereafter by other lessees). The Renovation Requirement shall not pertain to the Anchorage Improvements that are required to be replaced pursuant to Section 5.14 above. Substantial Commencement of Construction of the Renovation Requirement shall occur not earlier than September 1, 2034 and the Renovation Requirement shall be completed not later than August 31, 2036.

Prior to the commencement of the Renovation Requirement, Lessee shall submit to Director a renovation plan ("Renovation Plan"), which renovation plan shall (a) describe the proposed renovation work in such detail as reasonably acceptable to Director, (b) include a design, governmental approval and construction schedule for the work described therein, (c) include a budget for all work costs, and (d) address such other matters as Director reasonably requests. The Renovation Plan shall be submitted by Lessee to County not later than such date as, taking into consideration the approval periods described in this Section 5.15 and Sections 5.2

through 5.5 above, the estimated time required to obtain all necessary governmental approvals and permits, and the estimated time required to complete the work, will permit the completion by Lessee of the Renovation Requirement by not later than August 31, 2036. Director shall have sixty (60) days within which to reasonably approve or disapprove the Renovation Plan, or to approve the Renovation Plan subject to conditions imposed by Director in its reasonable judgment. Failure of Director to notify Lessee in writing of its approval or disapproval of the Renovation Plan shall be deemed Director's disapproval of the Renovation Plan. Upon Director's approval of the Renovation Plan, Lessee shall proceed to satisfy all conditions in this Article 5 to the commencement of the Renovation Requirement and to commence and complete the Renovation Requirement in accordance with the Renovation Plan and the terms and conditions of this Article 5. Director's approval of the actual plans and specifications for the Renovation Requirement shall proceed in accordance with the protocol for plan submission and approval set forth in Sections 5.2 through 5.5 of this Lease, except that the schematic plan submittal requirements set forth in Section 5.2 shall not be applicable to the extent that the Renovation Plan approved by Director satisfies the requirements of such Section 5.2.

Lessee's failure to comply with the schedule approved by Director as part of the Renovation Plan and/or to meet the construction commencement and completion deadlines pertaining to the Renovation Requirement set forth in this Section 5.15 shall, if not cured within the cure period set forth in subsection 13.1.2, constitute an Event of Default. Any dispute as to whether Director has failed to exercise reasonable judgment in the approval or disapproval of the Renovation Plan shall be submitted to arbitration pursuant to Article 16 of this Lease. If the arbitrator determines that Director failed to exercise reasonable judgment in the approval or disapproval of the Renovation Plan and as a result thereof Lessee is delayed in the completion of the Renovation Requirement by the required completion date set forth in the first paragraph of this Section 5.15, then the required date for the completion of such Renovation Requirement shall be extended by the duration of the delay caused by Director's failure to reasonably approve the Renovation Plan, provided that the required date for the completion of the Renovation Requirement shall not be extended beyond the date reasonably required for the completion by Lessee of the Renovation Requirement.

Commencing with the month following the month during which the Completion Date occurs, and continuing each month thereafter until the Substantial Commencement of Construction of the Renovation Requirement (but at least through the month of August, 2034), Lessee shall establish and make monthly deposits to a reserve fund (the "Renovation Fund") in accordance with the provisions of this Section 5.15 for the purpose of funding a portion of the cost of the Renovation Requirement. Renovation Fund deposits shall be made on or before the fifteenth (15th) day of each calendar month in an amount equal to one percent (1%) of the Gross Receipts for the immediately preceding month. All interest and earnings on the Renovation Fund shall be added to the Renovation Fund and held in accordance with the provisions of this Section 5.15, but shall not be treated as a credit against the Renovation Fund deposits required to be made by Lessee pursuant to this Section 5.15. The Renovation Fund shall be held in an account established with a reputable financial institution (including Lessee's Encumbrance Holder) acceptable to Director into which deposits shall be made by Lessee (and/or into which Lessee's Encumbrance Holder shall provide funds) pursuant to this Section 5.15. The amounts to be deposited into the Renovation Fund shall be inclusive of amounts required to be deposited with and held by an Encumbrance Holder, provided that the Encumbrance Holder acknowledges

that such amounts are subject to the requirements and shall be made available for the purposes of this Section 5.15. Lessee shall have the right to fund or replace amounts deposited in the Renovation Fund with a letter(s) of credit in form and issued by an institutional issuer reasonably satisfactory to Director.

Disbursements shall be made from the Renovation Fund only for costs which have been approved by Director and which satisfy the requirements of this Section 5.15. Prior to the disbursement of any amounts from the Renovation Fund, Lessee shall furnish to Director applicable invoices, evidence of payment and other back-up materials reasonably acceptable to Director concerning the use of amounts from the Renovation Fund. Director shall have no obligation to approve the disbursement of amounts from the Renovation Fund unless and until Director has approved Lessee's Renovation Plan and Lessee has furnished to Director evidence reasonably satisfactory to Director that Lessee has sufficient financial resources to pay for all costs of the Renovation Requirement.

## 6. CONDEMNATION.

### 6.1 Definitions.

6.1.1. Condemnation. "Condemnation" means (1) the exercise by any governmental entity of the power of eminent domain, whether by legal proceedings or otherwise, and (2) a voluntary sale or transfer to any Condemnor (as hereafter defined), either under threat of Condemnation or while legal proceedings for Condemnation are pending.

6.1.2. Date of Taking. "Date of Taking" means the date the Condemnor has the right to possession of the Premises being condemned.

6.1.3. Award. "Award" means all compensation, sums or anything of value awarded, paid or received from a total or partial Condemnation.

6.1.4. Condemnor. "Condemnor" means any public or quasi-public authority, or private corporation or individual, having the power of eminent domain.

6.2 Parties' Rights and Obligations to be Governed by Lease. If, during the Term of this Lease, there is any taking of all or any part of the Premises, any Improvements on the Premises or any interest in this Lease by Condemnation, the rights and obligations of the parties shall be determined pursuant to the provisions of this Article 6.

6.3 Total Taking. If the Premises are totally taken by Condemnation, this Lease shall terminate on the Date of Taking.

6.4 Effect of Partial Taking. If a portion of the Premises or the Improvements thereon are taken by Condemnation, this Lease shall remain in effect, except that Lessee may elect to terminate this Lease if the remaining portion of the Premises are rendered unsuitable (as defined herein) for Lessee's continued use for the purposes contemplated by this Lease. The remaining portion of the Premises shall be deemed unsuitable for Lessee's continued use if, following a reasonable amount of reconstruction (to the extent that funds therefor are available from the



anticipated Award), Lessee's business on the Premises could not be operated at an economically feasible level. Lessee must exercise its right to terminate by giving County written notice of its election within ninety (90) days after the nature and extent of the taking and the probable amount of compensation have been determined. Such notice shall also specify the date of termination, which shall not be prior to the Date of Taking. Failure to properly exercise the election provided for in this Section 6.4 will result in this Lease's continuing in full force and effect, except that Annual Minimum Rent shall be abated pursuant to Section 6.5, below.

In the event that Lessee does not elect to terminate this Lease as provided above, then Lessee, whether or not the Awards or payments, if any, on account of such taking shall be sufficient for the purpose, shall, at its sole cost and expense, within a reasonable period of time, commence and complete restoration of the remainder of the Premises as nearly as possible to its value, condition and character immediately prior to such taking, taking into account, however, any necessary reduction in size or other change resulting from the taking; provided, however, that in case of a taking for temporary use, Lessee shall not be required to effect restoration until such taking is terminated.

6.5 Effect of Partial Taking on Rent. If any portion of the Premises is taken by Condemnation and this Lease remains in full force and effect as to the portion of the Premises not so taken (a "Partial Taking"), the Annual Minimum Rent shall be reduced as of the date of the Partial Taking to an amount equal to the Annual Minimum Rent multiplied by the ratio of the fair market value of the portion of the Premises not so taken to the fair market value of the entire Premises immediately prior to the Partial Taking, but without regard to any diminution in value resulting from the imminent taking. Upon the next Annual Minimum Rent Adjustment Date, as described in Section 4.3 above, if any, for the purposes of adjusting the Annual Minimum Rent, all Annual Minimum Rent and Percentage Rent paid by Lessee to County prior to the date of the Partial Taking shall be adjusted, for the purposes of this calculation only, to the proportion that the fair market value of the portion of the Premises taken bears to the fair market value of the entire Premises immediately prior to the taking. If the parties cannot agree upon the appropriate Annual Minimum Rent, the matter shall be settled through arbitration in the manner set forth in Article 16 hereof. Any determinations of fair market value made pursuant to this Section 6.5 in connection with any arbitration proceeding shall be predicated upon the "income approach" or "income capitalization approach" to property valuation, as defined in The Dictionary of Real Estate Appraisal and/or The Appraisal of Real Estate, published by the Appraisal Institute or any successor organization (the "Income Approach"). All other obligations of Lessee under this Lease, including but not limited to the obligation to pay Percentage Rent, shall remain in full force and effect.

6.6 Waiver of Code of Civil Procedure Section 1265.130. Each party waives the provisions of Code of Civil Procedure Section 1265.130 allowing either party to petition the Superior Court to terminate this Lease in the event of a Partial Taking of the Premises.

6.7 Payment of Award. Awards and other payments on account of a taking, less costs, fees and expenses incurred in the collection thereof ("Net Awards and Payments"), shall be applied as follows:

6.7.1. Partial Taking Without Termination. Net Awards and Payments received on account of a Taking other than a total Taking or a Partial Taking which results in termination hereof or a taking for temporary use shall be held by County and shall be paid out to Lessee or Lessee's designee(s), in progress payments, to pay the cost of restoration of the Premises. The balance, if any, shall be divided between County and Lessee pro rata, as nearly as practicable, based upon (1) the then value of County's interest in the Premises (including its interest hereunder) and (2) the then value of Lessee's interest in the remainder of the Term of this Lease including bonus value (for such purposes, the Term of this Lease shall not be deemed to have terminated even if Lessee so elects under Section 6.4). Any determinations of fair market value made pursuant to this Section 6.5 shall be predicated upon the Income Approach.

In case of a taking other than a total taking or a taking for temporary use, Lessee shall furnish to County evidence satisfactory to County of the total cost of the restoration required by Section 6.4.

6.7.2. Taking For Temporary Use. Net Awards and Payments received on account of a taking for temporary use shall be paid to Lessee; provided, however, that if any portion of any such award or payment is paid by the Condemnor by reason of any damage to or destruction of the Improvements, such portion shall be held and applied as provided in the first sentence of Section 6.7, above.

6.7.3. Total Taking and Partial Taking with Termination. Net Awards and Payments received on account of a total taking or a Partial Taking which results in the termination of this Lease shall be allocated in the following order:

First: There shall be paid to County an amount equal to the greater of (a) the sum of (1) the present value of all Annual Minimum Rent, Percentage Rent and other sums which would become due through the expiration of the Term if it were not for the taking less, in the event of a Partial Taking, an amount equal to the present value of the fair rental value of the portion of the Premises (with the Improvements thereon) not subject to the Partial Taking, from the date of the Partial Taking through the expiration of the Term and (2) the present value of the portion of the Premises (with the Improvements thereon) subject to the taking from and after the expiration of the Term or (b) in the event of a Partial Taking, the present value of the fair market rental value of the portion of the Premises (with the Improvements thereon) subject to the Partial Taking, from and after the expiration of the Term.

Second: There shall be paid to any Encumbrance Holder an amount equal to the sum of any unpaid principal amount of any Encumbrance secured by the Premises plus costs, expenses, and other sums due pursuant the loan documents, if any, and any interest accrued thereon, all as of the date on which such payment is made; and then

Third: There shall be paid to Lessee an amount equal to the value of Lessee's interest in the remainder of the Term of this Lease, including the value of the ownership interest in and use of the Improvements constructed on the Premises, determined as of the date of such taking, less payments made under paragraph Second above. For such

purposes, the Term of this Lease shall not be deemed to have terminated even if Lessee so elects under Section 6.4.

Fourth: The balance shall be paid to County.

6.7.4. Disputes. Any dispute under Article 6 concerning the fair market value of the Premises or any portion thereof, computation of present value or the determination of the amount of Annual Minimum Rent or Percentage Rent or other sums which would have become due over the Term of this Lease which are not resolved by the parties, shall be submitted to arbitration pursuant to Article 16 of this Lease. Such valuations, computations and determinations of value shall be made utilizing the Income Approach.

## 7. SECURITY DEPOSIT.

7.1 Amount and Use. Concurrent with the execution of this Lease, Lessee shall deliver to County, in the form of a cashier's check, wire transfer of immediately available funds, certificate of deposit or irrevocable letter of credit ("Letter of Credit") acceptable to County with respect to form, content and issuer, a security deposit in an amount which represents three (3) times the current Monthly Minimum Rent (the "Security Deposit"). Within thirty (30) days after any adjustment of the Monthly Minimum Rent, the Security Deposit shall be increased by Lessee or may be reduced such that it at all times (other than during said thirty (30) day period) is equal to three (3) times the current Monthly Minimum Rent. The Security Deposit shall secure Lessee's obligations pursuant to this Lease, and may be drawn on by County, in whole or in part, to cover delinquent rent not paid by Lessee within any applicable notice and cure period and any other Events of Default of Lessee under this Lease. The Security Deposit shall be applied at the discretion of County. As long as no Event of Default by Lessee exists under the Lease, Lessee shall be entitled to any interest or other earnings which are actually earned on any unapplied portions of the Security Deposit delivered to County in the form of a certificate of deposit or other approved investment instrument (as opposed to cash or a Letter of Credit, on which Lessee shall not be entitled to interest). Provided that no Event of Default then exists under the Lease, at the end of each Lease Year Lessee shall be entitled to a credit for all interest accruing to Lessee's benefit with respect to the Security Deposit during such Lease Year pursuant to the immediately preceding sentence. Notwithstanding any contrary provision hereof, County shall have the right at any time to apply any accrued but uncredited interest (which accrued during non-Event of Default periods) against delinquent rents and other amounts owed by Lessee under the Lease.

7.2 Replacement. In the event that some or all of the Security Deposit is drawn against by County and applied against any delinquent rent not paid by Lessee within any applicable notice or cure period, or against other Events of Default of Lessee hereunder, Lessee shall, within five (5) days after receipt of written notice of the amount so applied and the reasons for such application, deposit sufficient additional funds with County, or cause the issuer of the Letter of Credit to reinstate the Letter of Credit to its full face amount, so that at all times that this Lease is in effect (other than between the date of the application of funds by County and the expiration of said five (5) day period), the full amount of the Security Deposit shall be available to County. Failure to maintain and replenish the Security Deposit, if not cured within the time period set forth in subsection 13.1.3, shall constitute an Event of Default hereunder.

7.3 Renewal. Any Letter of Credit procured by Lessee and delivered to County shall provide for notice to County by the issuer thereof no less than sixty (60) days prior to the expiration of the term of such Letter of Credit in the event that the issuer thereof is not irrevocably committed to renew the term of such Letter of Credit. In the event that, thirty (30) days prior to the expiration of such Letter of Credit, Lessee has not provided County with satisfactory evidence of its renewal or replacement, or has not provided County with adequate replacement security, County may draw down upon the Letter of Credit and hold the funds as security for Lessee's obligations as set forth in this Lease and may apply the funds to cover delinquent rent not paid by Lessee within any applicable notice and cure period and/or any other Event of Default of Lessee under this Lease.

## 8. INDEMNITY.

Except to the extent caused by the gross negligence or willful misconduct of any such indemnitee, Lessee shall at all times relieve, defend, indemnify, protect, and save harmless County and its respective Boards, officers, agents, consultants, counsel, employees and volunteers from any and all claims, costs, losses, expenses or liability, including expenses and reasonable attorneys' fees incurred in defending against the same by an attorney selected by Lessee and reasonably satisfactory to County, for the death of or injury to persons or damage to property, including property owned or controlled by or in the possession of County or any of its Board, officers, agents, employees or volunteers, to the extent that such arises from or is caused by (a) the operation, maintenance, use, or occupation of the Premises by Lessee or its agents, officers, employees, licensees, concessionaires, permittees or Sublessees, (b) the acts, omissions, or negligence of Lessee, its agents, officers, employees, licensees, concessionaires, permittees or Sublessees, or (c) the failure of Lessee, its agents, officers, employees, licensees, concessionaires, permittees or Sublessees to observe and abide by any of the terms or conditions of this Lease or any applicable law, ordinance, rule, or regulation. The obligation of Lessee to so relieve, indemnify, protect, and save harmless County and each of its respective Boards, officers, agents, consultants, counsel, employees and volunteers, shall continue during any periods of occupancy or of holding over by Lessee, Lessee, its agents, officers, employees, licensees, concessionaires, permittees or Sublessees, beyond the expiration of the Term or other termination of this Lease.

## 9. INSURANCE.

9.1 Lessee's Insurance. Without limiting Lessee's indemnification of County, during the Term of this Lease Lessee shall provide and maintain the following insurance issued by companies authorized to transact business in the State of California by the Insurance Commissioner and having a "general policyholders rating" of at least A-VII (or such higher rating as may be required by an Encumbrance Holder) as set forth in the most current issue of "A.M. Best's Key Rating Guide" or an equivalent rating from another industry-accepted rating agency.

9.1.1 General Liability insurance (written on ISO policy form CG 00 01 or its equivalent) and endorsed to name County as an additional insured, with limits of not less than the following:

General Aggregate:	\$20 million
Products/Completed Operations Aggregate:	\$20 million
Personal and Advertising Injury:	\$ 10 million
Each Occurrence:	\$ 10 million

Lessee may satisfy the above coverage limits with a combination of primary coverage and excess liability/umbrella coverage as long as (a) Lessee's primary coverage is at least One Million Dollars (\$1,000,000) per occurrence, One Million Dollars (\$1,000,000) annual aggregate, (b) the excess liability/umbrella coverage is for an aggregate limit of at least Fifty Million Dollars (\$50,000,000), which limits may, at Lessee's election, be carried in the form of two separate policies, (c) the primary coverage and all excess liability/umbrella coverages are issued by the same insurer and such insurer is reasonably satisfactory to County, and (d) the combination of such primary coverage and excess liability/umbrella coverage provides County with at least the same protection in all respects as if Lessee had carried primary coverage for the entire limits listed above in this Section 9.1.1 and in accordance with the other terms and provisions set forth herein applicable to such coverage.

9.1.2 Automobile Liability insurance (written on ISO form CA 00 01 or its equivalent) with a limit of liability of not less than \$2 million for each accident and providing coverage for all "owned", "hired" and "non-owned" vehicles, or coverage for "any auto." Lessee also shall provide Garagekeeper's Legal Liability coverage, (written on ISO form CA 99 37 or its equivalent) with limits of not less than \$3 million for this location.

9.1.3 Workers Compensation and Employers' Liability insurance providing workers compensation benefits, as required by the Labor Code of the State of California and for which Lessee is responsible, and including Employers' Liability coverage with limits of not less than the following:

Each Accident:	\$1 million
Disease - policy limit:	\$1 million
Disease - each employee:	\$1 million

9.1.4 Commercial Property insurance covering damage to the Premises, including improvements and betterments, from perils covered by the Causes-of-Loss Special Form (ISO form CP 10 30), excluding earthquake, and including

Ordinance or Law Coverage, written for the full replacement value of the property, with a deductible no greater than \$250,000 or 5% of the property value, which ever is less, and also including business interruption, including loss of rent, equal to two (2) years annual rent, with proceeds payable to Lessee and County as their interests may appear and utilized for repair and restoration of the Premises and Improvements.

9.1.5 For construction projects, including any Alterations or restoration, on the Premises, Lessee or Lessee's contractor will provide the following insurance (County reserves the right to determine the coverage and coverage limit required on a project by project basis.):

9.1.5.1 Builder's Risk Course of Construction to insure against damage from perils covered by the Causes-of-Loss Special Form (ISO form CP 10 30). This insurance shall be endorsed to include ordinance or law coverage, coverage for temporary offsite storage, debris removal, pollutant cleanup and removal, testing, preservation of property, excavation costs, landscaping, shrubs and plants and full collapse coverage during construction (without restricting collapse coverage to specified perils. This insurance shall be written on a completed-value basis and cover the entire value of the construction project, including County furnished materials and equipment, against loss or damage until completion and acceptance by Lessee.

9.1.5.2 General Liability. Such insurance shall be written on ISO policy form CG 00 01 or its equivalent with limits as required by the County for the Alterations. The products/completed operations coverage shall continue to be maintained for a period to be determined by the County from the date the Alterations are completed and accepted by the Lessee.

9.1.5.3 Automobile Liability. Such coverage shall be written on ISO policy form CA 00 01 or its equivalent with a limit of liability as required by the County for the Alterations. Such insurance shall include coverage for all "owned," "hired" and "non-owned" automobiles, or coverage for "any auto."

9.1.5.4 Professional Liability. Such insurance shall cover liability arising from any error, omission, negligent or wrongful act of the contractor and/or licensed professional (i.e. architects, engineers, surveyors, etc.) with limits as required by the County for the Alterations. This coverage shall also provide an extended two-year reporting period commencing upon termination or cancellation of the construction project.

9.1.5.5 Asbestos Liability or Contractors Pollution Liability insurance, if construction requires remediation of asbestos or pollutants. Such insurance shall cover liability for personal injury and property damage arising from the release, discharge, escape, dispersal or emission of asbestos or pollutants, whether gradual or sudden, and include coverage for the costs and expenses associated with voluntary clean-up, testing, monitoring and treatment of asbestos in

compliance with governmental mandate or requests. If the asbestos or pollutant will be removed from the construction site, asbestos or pollution liability is also required under the contractor's or subcontractor's Automobile Liability Insurance. Contractor shall maintain limits as required by the County for the Alterations.

9.1.6 If the use of the Premises or Improvements involves any manufacture, distribution or service of alcoholic beverages, Liquor Liability insurance (written on ISO policy form CG 00 33 or 34 or their equivalent) with a liability limit of not less than Five Million Dollars (\$5,000,000) per occurrence and an annual aggregate of Ten Million Dollars (\$10,000,000). If written on a claims made form, the coverage shall also provide an extended two-year reporting period commencing upon the termination or cancellation of the Lease.

9.2 Provisions Pertaining to Property Insurance. The insurance coverage required in Sections 9.1.4 and 9.1.5.1 shall name the County as an additional insured and any Encumbrance Holder as loss payee. Subject to Section 12.8, upon the occurrence of any loss, the proceeds of property and builder's risk insurance shall be held by County in trust for the named insureds as their interests appear, and shall be disbursed by County on a monthly basis to pay for work completed in accordance with then-prevailing industry custom and practice; provided, however, that if the insurance proceeds received with respect to a loss are less than \$500,000 (as adjusted to reflect any increase in the ENR Index during the period from the Effective Date through the date of the loss), the Encumbrance Holder shall have the right to hold and disburse such proceeds to pay the renovation and repair of Improvements in accordance with the terms of the loan agreement or deed of trust with Lessee's Encumbrance Holder. In the event of a loss, Lessee shall be obligated to rebuild or replace the destroyed or damaged buildings, structures, equipment, and Improvements, in accordance with the procedures set forth hereinabove for the initial construction, except as otherwise provided in Article 11 hereof. Subject to Section 12.8, any surplus or proceeds after said rebuilding or replacement shall be distributed to Lessee.

9.3 General Insurance Requirements. Subject to the immediately following grammatical paragraph, a duplicate policy or policies (or certificates of insurance) evidencing the insurance coverage required under this Article 9, in such form as shall be reasonably acceptable to County, shall be filed with Director no later than the Effective Date, provided that the evidence of the insurance coverage required under Section 9.1.5 shall be required to be delivered by Lessee prior to the commencement of any Alterations. All certificates of insurance shall (a) specifically identify the Lease; (b) clearly evidence all coverages required under the Lease; (c) identify any deductibles or self-insured retentions exceeding \$25,000; and (d) evidence all other requirements under this Article 9. The policy or policies of insurance shall provide that such insurance coverage will not be canceled or reduced without at least thirty (30) days prior written notice to Director or ten (10) business days in case of cancellation for failure to pay the premium. At least ten (10) business prior to the expiration of such policy, a certificate showing that such insurance coverage has been renewed shall be obtained by Lessee and filed with Director.

In lieu of submitting a copy of the policy or policies evidencing the above insurance, Lessee may submit in a form reasonably acceptable to County a certificate of insurance.

Any insurance coverage may be issued in the form of a blanket policy insuring other

properties, in form, amount and content reasonably satisfactory to County such that such coverage provides the same protection as required under this Article 9 as if the insurance had been procured on an individual property basis.

9.4 Additional Required Provisions. Lessee's insurance policies required by this Article 9 shall be for a term of not less than one year and shall additionally provide:

- (a) that County and its respective Board of Supervisors and members thereof, and County's officers, agents, employees and volunteers, shall be named as additional insureds under any liability insurance policy or policies;
- (b) that the full amount of any losses to the extent property insurance proceeds are available shall be payable to additional insureds notwithstanding any act, omission or negligence of Lessee which might otherwise result in forfeiture of such insurance;
- (c) in any property insurance policy, a waiver of all right of subrogation against County and its respective Board of Supervisors and members thereof, and County's officers, agents, employees and volunteers with respect to losses payable under such policies;
- (d) in any property insurance policy, that such policies shall not be invalidated should the insured waive, prior to a loss, any or all right of recovery against any party for losses covered by such policies;
- (e) the property and commercial general liability insurance policies shall provide coverage on a primary and non-contributory basis with respect to the additional insureds, regardless of any other insurance or self-insurance that such additional insureds may elect to purchase or maintain;
- (f) that losses, if any, shall be adjusted with and payable to Lessee, County and Encumbrance Holders, if any, pursuant to a standard mortgagee clause;
- (g) that such policies shall not be suspended, voided, canceled, reduced in coverage or in limits or materially changed without at least thirty (30) days prior written notice to County and all Encumbrance Holders or ten (10) business days in case of cancellation for failure to pay the premium;
- (h) that the commercial general liability insurance shall apply separately to each insured against whom a claim is made, except with respect to the overall limits of said insurer's liability; and,
- (i) that the property and commercial general liability insurance policies shall contain no special limitations on the scope of protection afforded to the additional insureds, and no failure to comply with the reporting provisions of such policies shall affect the coverage afforded to such additional insureds.

9.5 Failure to Procure Insurance. If Lessee fails to procure or renew the herein required insurance and does not cure such failure within five (5) business days after written



notice from County, in addition to the other rights and remedies provided hereunder, County may, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith. All monies so paid by County shall be repaid by Lessee, with interest thereon at the Applicable Rate, to County within five (5) business days after Lessee's receipt of written demand therefor.

9.6 Adjustment to Amount of Liability Coverage. The amounts of liability insurance required under Section 9.1.1, 9.1.2 and 9.1.3 shall be subject to renegotiation as of each fifth (5th) anniversary of the Effective Date (each, an "Insurance Renegotiation Date"). If County and Lessee cannot agree upon the amount of insurance by the sixtieth (60th) day preceding an Insurance Renegotiation Date, the matter shall be resolved by binding arbitration in accordance with Article 16. In no event shall the amounts of liability insurance be decreased as a result of such renegotiation or arbitration. Following such renegotiation or arbitration, the parties shall execute an amendment to this Lease setting forth the renegotiated insurance provisions or the arbitration judgment, as appropriate.

9.7 Notification of Incidents, Claims or Suits. Lessee shall report to County any accident or incident on or about the Premises which involves injury or property damage which might reasonably be thought to result in the filing of a claim or lawsuit against Lessee and/or County. Such report shall be made in writing within 72 hours of Lessee's knowledge of such occurrence.

## 10. MAINTENANCE AND REPAIR; DAMAGE AND DESTRUCTION.

10.1 Lessee's Maintenance and Repair Obligations. Lessee shall maintain the Premises, including paved or unpaved ground surfaces and Improvements thereon, in conformance with such reasonable rules and regulations regarding the use and occupancy of commercial and marina facilities in Marina del Rey (such as the Premises) as may be promulgated by County from time to time for general applicability on a non-discriminatory basis, as revised from time to time. Without limiting the foregoing, at Lessee's sole cost and expense, but subject to the terms and conditions of this Lease, Lessee shall keep and maintain the Premises and all equipment, Improvements or physical structures of any kind which may exist or be erected, installed or made on the Premises in good and substantial repair and condition, including without limitation capital improvements and structural and roof repairs and replacement, and shall make all necessary repairs and alterations and replacements thereto, except as otherwise provided in this Article 10. Lessee shall undertake such repairs, alterations or replacements in compliance with Applicable Laws, or as reasonably required in writing by Director to Lessee incident to the provisions of this Article 10. Lessee shall maintain all Improvements on the Premises in a safe, clean, wholesome and sanitary condition, to the reasonable satisfaction of Director and in compliance with all Applicable Laws. Lessee shall, at its own cost and expense, install, maintain and replace landscaping between the streets abutting the Premises and the building footprints on the Premises as is reasonably necessary to create a pleasing development to the reasonable satisfaction of Director. Lessee specifically agrees to provide proper containers for trash and garbage which are screened from public view, to keep the Premises free and clear of rubbish and litter. Lessee shall at all times during the Term keep all slips in good repair and condition in accordance with the requirements of Policy Statement No. 25 and the Specifications and Minimum Standards of Architectural Treatment and Construction

for Marina del Rey approved in 1989, as modified by County or the Department from time to time (the "Minimum Standards"). Such obligation shall include the use of new materials, parts and components rather than the repair or rejuvenation of existing materials, parts and components. Any requirement for repair of slips due to a deficiency notice issued by the Department shall be accomplished with new materials and parts rather than patching or other like method. Such required replacement of deficiency-cited items with wholly new parts and materials shall, however, be limited to the specific item in disrepair and shall not connote a requirement, for maintenance purposes, that areas or items surrounding the deficient item be replaced with new materials and/or parts. On or before the commencement of each Lease Year following the Effective Date Lessee shall submit to the Director, for the Director's approval in its reasonable discretion, a work plan for the repair and refurbishment of the slips on the Premises during the upcoming Lease Year. County in its proprietary capacity shall have the right to enter upon and inspect the Premises at any reasonable time for cleanliness, safety and compliance with this Section 10.1, as long as such entrance is not done in a manner which would unreasonably interfere with the operation of the Premises. Lessee's obligation to maintain and restore is absolute, and is not in any way dependent upon the existence or availability of insurance proceeds, except as otherwise provided in this Article 10. Restoration shall take place in accordance with the provisions of Article 5.

10.2 Maintenance Deficiencies. If County provides written notice to Lessee of a deficiency or other breach in the performance by Lessee of the maintenance and repair obligations of Lessee under Section 10.1 above, then Lessee shall promptly commence the cure thereof and shall complete such cure within the time period for such cure set forth in the County's deficiency notice, which cure period shall not be less than thirty (30) days except if the deficiency pertains to a condition that is health or safety related or otherwise constitutes an emergency situation, in which case County shall have the right to immediately require Lessee to take all appropriate steps to avoid damage or injury. If Lessee fails to cure any such deficiency within the cure period set forth in County's deficiency notice, then in addition to, and not in lieu of, any rights or remedies that County may have under Article 13 of this Lease for defaults not cured within the applicable notice and cure periods set forth therein, Lessee shall pay to County an amount equal to One Hundred Dollars (\$100) per day per item of deficiency for each day after such cure period that the deficiency item remains uncured; provided, however, if the nature of the deficiency is such that it is not capable of cure within the cure period specified in County's notice (for example, as a result of permitting requirements or construction material procurement delays beyond the control of Lessee), then as long as during the specified cure period Lessee commences the cure of the deficiency and thereafter continues the prosecution of the completion of such cure in a manner and with such diligence that will effectuate the cure in as short a period as reasonably possible, then the cure period specified in County's deficiency notice shall be extended for such additional time as necessary to complete the cure in as short a period as reasonably possible. If a cited deficiency is not health or safety related and does not otherwise constitute an emergency, and if in the reasonable and good faith business judgment of Lessee the deficiency notice was erroneously issued by County, then Lessee shall have the right to contest such deficiency notice by written notice to Director within five (5) business days after the date of the deficiency notice. If Lessee files any such contest with Director, then Director shall have the right, in the exercise of Director's discretion, to consider such contest. If Lessee's contest is made on a reasonable and good faith basis, then the cure period for the deficiency notice shall be tolled during the period between the date Director receives written notice of such contest and

continuing until Director notifies Lessee in writing that either Director denies Lessee's contest or that Director has determined not to consider such contest. The One Hundred Dollars (\$100) per diem amount set forth in this Section 10.2 shall be adjusted every three (3) years during the remaining Lease Term on each third (3rd) anniversary of the Effective Date to reflect any change in the Consumer Price Index over the three (3) year period immediately preceding each such adjustment. If Lessee fails to pay any amounts payable by Lessee under this Section 10.2 within ten (10) days after written notice from County, then County shall have the right to draw on the Security Deposit to cover such unpaid amounts.

10.3 Option to Terminate for Uninsured Casualty. Lessee shall have the option to terminate this Lease and be relieved of the obligation to restore the Improvements on the Premises where all or substantially all of the Improvements on Premises are substantially damaged or destroyed and such damage or destruction resulted from a cause not required to be insured against by this Lease (an "Uninsured Loss"), and where all of the following occur:

10.3.1. No more than one hundred (100) days following the Uninsured Loss, Lessee shall notify County of its election to terminate this Lease; to be effective, this notice must include both a copy of Lessee's notification to the Encumbrance Holder, if any, of Lessee's intention to exercise this option to terminate and Lessee's certification under penalty of perjury that Lessee has delivered or mailed such notification to the Encumbrance Holder in accordance with this subsection 10.3.1. County shall be entitled to rely upon the foregoing notice and certification as conclusive evidence that Lessee has notified the Encumbrance Holder regarding Lessee's desire to terminate this Lease.

10.3.2. No more than sixty (60) days following the giving of the notice required by subsection 10.3.1 or such longer time as may be reasonable under the circumstances, Lessee shall, at Lessee's expense: remove all debris and other rubble from the Premises; secure the Premises against trespassers; and, at County's election, remove all remaining Improvements on the Premises.

10.3.3. No more than sixty (60) days following the loss, Lessee delivers to County a deed to the Premises in recordable form, in form and content satisfactory to County and/or with such other documentation as may be reasonably requested by County or any title company on behalf of County, terminating Lessee's interest in the Premises and reconveying such interest to County free and clear of any and all Encumbrances and Subleases.

10.3.4. Within ten (10) days following the County's receipt of the notice referred to in subsection 10.3.1, County has not received both written notice from the Encumbrance Holder, if any, objecting to such termination and an agreement containing an effective assignment of Lessee's interest in this Lease to such Encumbrance Holder whereby such Encumbrance Holder expressly assumes and agrees to be bound by and perform all of Lessee's obligations under this Lease.

10.4 No Option to Terminate for Insured Casualty. Lessee shall have no option to terminate this Lease or otherwise be relieved of its obligation to restore the Improvements on the

Premises where the damage or destruction results from a cause required to be insured against by this Lease.

10.5 No County Obligation to Make Repairs. County shall have no obligation whatsoever to make any repairs or perform any maintenance on the Premises.

10.6 Repairs Not Performed by Lessee. If Lessee fails to make any repairs or replacements as required, Director may notify Lessee of said failure in writing, and should Lessee fail to cure said failure and make repairs or replacements within a reasonable time as established by Director, County may make such repairs or replacements and the cost thereof, including, but not limited to, the cost of labor, overhead, materials and equipment, shall be charged against Lessee as provided in Section 13.5.

10.7 Other Repairs. Although having no obligation to do so, County may, at its own cost and at its sole discretion, perform or permit others to perform any necessary dredging, filling, grading or repair of water systems, sewer facilities, roads, or other County facilities on or about the Premises.

10.8 Notice of Damage. Lessee shall give prompt notice to County of any fire or damage affecting the Premises from any cause whatsoever.

10.9 Waiver of Civil Code Sections. The parties' rights shall be governed by this Lease in the event of damage or destruction. The parties hereby waive the provisions of California Civil Code Section 1932 and any other provisions of law which provide for contrary or additional rights.

## 11. ASSIGNMENT AND SUBLEASE.

### 11.1 Subleases.

11.1.1. Definition. The term "Sublease" shall mean any lease, license, permit, concession or other interest in the Premises, or a right to use the Premises or a portion thereof, which is conveyed or granted by Lessee to a third party, and which constitutes less than the unrestricted conveyance of the entire Lessee's interest under this Lease. "Sublessee" shall be the person or entity to whom such right to use is conveyed by a Sublease. A Sublease which grants or conveys to the Sublessee the right to possess or use all or substantially all of the Premises is sometimes referred to in this Lease as a "Major Sublease" and the Sublessee under such agreement is sometimes referred to in this Lease as a "Major Sublessee".

11.1.2. Approval Required. At least thirty (30) days prior to the proposed effective date of any Sublease that is not a Major Sublease or an Approved Slip Lease, or of any amendment or assignment of such Sublease, Lessee shall submit a copy of such Sublease, amendment or assignment to Director for approval, which approval shall be given or withheld at Director's sole and absolute discretion. To the extent practical, Director shall approve or disapprove said proposed Sublease, amendment or assignment within thirty (30) days after receipt thereof. In no event, however, shall any such Sublease, amendment or assignment be made or become effective without the prior

approval of Director. Each such Sublease shall specifically provide that the Sublessee shall comply with all of the terms, covenants, and conditions of this Lease applicable to the portion of the Premises subject to the Sublease.

Notwithstanding any contrary provision of this Article 11, Lessee shall not be required to obtain County's approval of any Sublease of an individual boat slip in the ordinary course (but not the master lease of multiple slips) to a person or persons who will physically occupy the subleased slip, as long as such Sublease is in the form of the standard boat slip lease hereafter submitted to and approved by County and the term of such Sublease does not exceed one (1) year (each, an "Approved Slip Lease"). The terms and provisions of Sections 11.2 and 11.3 of this Lease shall not be applicable to Approved Slip Leases. Upon request by County, Lessee shall furnish County with a current rent roll respecting the Approved Slip Leases and a copy of all of such Approved Slip Leases.

11.1.3. Major Sublease. Lessee shall enter into a Major Sublease only with a reputable owner or manager of comparable commercial and marina facilities such as exist on the Premises. In light of the inherent detailed nature of a Major Sublease, Lessee shall deliver to County a copy of any proposed Major Sublease, or any sub-sublease or any other document pursuant to which an interest is proposed to be transferred in all or substantially all of the Premises, not less than sixty (60) days prior to the proposed effective date of such proposed Major Sublease or other document, for County's review and approval pursuant to the procedures and requirements specified in Section 11.2.

11.2 Approval of Assignments and Major Subleases. Except as specifically hereinbefore provided in this Article 11, Lessee shall not, without the prior written consent of County, which shall be based upon factors described in Exhibit C hereto, which is incorporated herein by this reference ("Assignment Standards"), either directly or indirectly give, assign, hypothecate, encumber, transfer, or grant control of this Lease or any interest, right, or privilege therein (including without limitation the right to manage or otherwise operate the Improvements located from time to time on the Premises), or enter into a Major Sublease affecting the Premises, or license the use of the all or substantially all of the Premises. Any Change of Ownership shall constitute an assignment of Lessee's interest under this Lease. In addition, for purposes of this provision, the following acts of Lessee shall require the prior written consent of County to be effective, unless they are Excluded Transfers: (1) the addition, removal or replacement of one or more general partners or managing members in a Lessee which is a limited partnership or limited liability entity, except (a) by death, insolvency, incapacity, resignation (except for a sole general partner, if any) or removal of a general partner or managing member and his replacement by a vote of the limited partners, the remaining general partners or remaining members, or (b) if any general partner or managing member owning more than fifty percent (50%) of the interests of the partnership or limited liability entity acquires the interest of another general partner or managing member owning fifteen percent (15%) or less of the interests in the partnership or limited liability entity; (2) the sale, assignment, or transfer of fifty-percent (50%) or more of the stock in a corporation which owns or is a general partner in a partnership owning an interest in this Lease. Lessee shall provide County with any information reasonably requested by County in order to determine whether or not to grant approval of the

assignment as provided herein. These same limitations and approval requirements shall apply with respect to the Sublessee's interest under a Major Sublease.

11.2.1. County's Use of Discretion and Limitation on Permissible Assignees. In exercising its discretion to approve assignments as provided in this Section 11.2, County shall take into account the Assignment Standards and, if County determines that such Assignment Standards are satisfied, County shall not unreasonably withhold or delay its consent to any proposed assignment.

11.2.2. Involuntary Transfers Prohibited. Except as otherwise specifically provided in this Lease, neither this Lease nor any interest therein shall be assignable or transferable in proceedings in attachment, garnishment, or execution against Lessee, or in voluntary or involuntary proceedings in bankruptcy or insolvency or receivership taken by or against Lessee, or by any process of law including proceedings under the Bankruptcy Act.

11.2.3. Procedure. Requests for approval of any proposed assignment shall be processed in accordance with the following procedures:

11.2.3.1. Prior to entering into any agreement requiring the approval of County pursuant to this Sections 11.1 or 11.2, Lessee (or the entity seeking approval of such assignment) shall notify County and deliver to County all information relevant to the proposed assignment, including without limitation any term sheets, letters of intent, draft Major Subleases, any other documents which set forth any proposed agreement regarding the Premises and the information set forth in subsection 11.2.3.5. County will evaluate the information provided to it and County may request additional information as may be reasonably necessary to act on the request. Under no circumstances will County formally discuss an assignment with any proposed assignee prior to reviewing the proposal with Lessee.

11.2.3.2. In completing its review of the proposal and granting or withholding its consent thereto, County will not be bound by any deadline contained in any proposed assignments, Major Subleases, escrow instructions or other agreements to which County is not a party.

11.2.3.3. Lessee acknowledges that the time needed for County to review a proposed assignment depends on many factors, including without limitation the complexity of the proposed transaction, the financial and other information submitted for review, and the workload of County's personnel. Notwithstanding the foregoing, County shall act as promptly as governmental processes permit in processing and acting upon a requested approval of an assignment of Lessee's interest under this Article 11.

11.2.3.4. Lessee shall be required to reimburse County for costs of legal, financial and/or other analyses, as well as County's Actual Costs incurred in connection with the proposed assignment, whether or not County ultimately

grants its approval to the proposed assignment. However, in the event that County approves the proposed assignment, Lessee shall receive a credit toward those costs to the extent that an Administrative Charge is paid in connection with the assignment.

11.2.3.5. Lessee or the proposed assignee shall provide County with sufficient information for County to determine if the public interest will be served by approving the proposed transaction. The information that must be provided includes, but shall not be limited to, the following:

(i) Nature of the Assignee. Full disclosure is required in accordance with this Lease and County's applicant disclosure policy then in effect. Additionally, a flowchart identifying the chain of ownership of the assignee and its decision-making authority shall be provided to County. County shall be advised if the proposed assignee, or any other person or entity for whom disclosure is required pursuant to County's disclosure policy, has had any leasehold or concessionaire's interest canceled or terminated by the landlord due to the tenant or Lessee's breach or default thereunder;

(ii) Financial Condition of Assignee. County shall be provided with current, certified financial statements, including balance sheets and profit and loss statements, demonstrating the proposed assignee's financial condition for the preceding five (5) years, or such shorter period that assignee has been in existence. This requirement shall also apply to any related person or entity which will be responsible for or guarantee the obligations of the proposed assignee or provide any funds or credit to such proposed assignee.

(iii) Financial Analysis. County shall be provided with the proposed assignee's financing plan for the operation of the Premises and for any contemplated improvement thereof, demonstrating such proposed assignee's financial capability to so operate the Premises and construct such improvements. Such financing plan shall include, but not be limited to, information detailing (1) equity capital; (2) sources and uses of funds; (3) terms of financing; (4) debt service coverage and ratio; and (5) loan to value ratio. The proposed assignee shall also provide County with documentation demonstrating such proposed assignee's financial viability, such as letters of commitment from financial institutions which demonstrate the availability of sufficient funds to complete any proposed construction or improvements on the Premises. Further, such proposed assignee shall authorize the release of financial information to County from financial institutions relating to the proposed assignee or other information supplied in support of the proposed assignment.

(iv) Business Plan. County shall be provided with the proposed assignee's business plan for the Premises, if applicable, including pro forma financial projections for the Premises for the five (5) year period beginning upon the commencement of the proposed assignment. Such pro forma projections will include capital costs, income and expenses, as well as debt service and all other

payments to providers of debt and equity, and will be accompanied by a statement of basic assumptions and an identification of the sources of the data used in the production of such projections. Subject to the requirements of the Public Records Act, County shall use its good faith efforts to keep such business plan confidential.

(v) Assignor's Financial Statements. County shall be provided with certified financial statements, including balance sheets and profits and loss statements concerning the assignor Lessee and its operations for the three (3) most recent years prior to the proposed transaction.

(vi) Cure of Defaults. County shall be provided with the proposed assignee's specific plans to cure any and all delinquencies under this Lease which may be identified by County, whether identified before or after the date of the proposed assignment.

(vii) Prospectus Materials. County shall be provided with any materials distributed to third parties relating to the business of the proposed assignee to be conducted on, from or relating to the Premises.

(viii) Other Information. County shall be provided with a clear description of the terms and conditions of the proposed assignment, including a description of the proposed use of the Premises and any proposed alterations or improvements to the Premises. Additionally, County shall be provided with any and all other information which it reasonably requests of Lessee in connection with its review of the proposed transaction, including without limitation materials pertinent to the issues noted in this subsection to the extent that they exist, such as escrow instructions, security agreements, personal property schedules, appraisals, market reports, lien releases, UCC Statements, preliminary title reports, management agreements affecting the Premises, contracts in excess of \$25,000 affecting the Premises, schedules of pending or threatened litigation, and attorneys' closing opinions relating to Lessee, the proposed assignee or the Premises. County shall endeavor to keep the foregoing materials confidential, subject to the Public Records Act and other Applicable Laws.

11.2.3.6. Nondisturbance. At the request of Lessee, County shall agree to execute a subordination, nondisturbance and attornment agreement on commercially reasonable terms in favor of any Major Sublessee.

11.2.3.7. Final Documents. Prior to granting its approval over any proposed assignment, County shall be provided with an executed Assignment and Acceptance of Assignment in form and content as approved or supplied by the County. Ten (10) copies of each must be submitted to County, of which five (5) shall be signed originals and properly acknowledged.

11.2.4. County Right to Recapture. Other than in connection with an Excluded Transfer as described in subsection 4.6.2, if Lessee proposes to assign its interest in this



Lease or the Premises, or proposes to enter into any Major Sublease affecting the Premises (with either such proposed transaction herein referred to as a "Proposed Transfer"), it shall provide County with written notice of such desire and the sale price ("Lessee Sale Price") at which it is willing to consummate the Proposed Transfer. Within thirty (30) days thereafter, the County shall provide Lessee with written notification as to whether it has elected to acquire an option to purchase the interest subject to the Proposed Transfer. During said thirty (30) day period, Lessee may continue to market the interest subject to the Proposed Transfer, provided that such interest is offered subject to County's rights as provided herein. In the event that, prior to the expiration of said thirty (30) day period, County has given notice to Lessee that it has elected to acquire said option, Lessee shall deliver to County an assignable option to purchase the interest subject to the Proposed Transfer ("County Option") at the Lessee Sale Price. Such County Option shall have a term of five (5) calendar months. During the term of the County Option, Lessee shall make the Premises and its books and records reasonably available for inspection by County and third parties as reasonably requested by County. In the event that County causes Lessee to issue the County Option and subsequently declines to purchase the interest subject to the Proposed Transfer at the Lessee Sale Price, County shall pay to Lessee at the expiration of the County Option period (or, at County's election, credit to Lessee against the next applicable installment(s) of Annual Minimum Rent and Percentage Rent), a sum (the "County Option Price") which represents (i) three percent (3%) of the Lessee Sale Price, plus (ii) seven percent (7%) interest per annum on said three percent (3%) of the Lessee Sale Price, from the date Lessee received notice of County's election to receive the County Option through the date on which the County Option Price, together with interest thereon, is paid or credited in full. If County either (a) fails to elect to cause Lessee to issue the County Option within said thirty (30) day period or (b) gives notice that it has elected not to acquire the interest subject to the Proposed Transfer, then Lessee shall be entitled to consummate the Proposed Transfer with a third party (subject to County's approval rights as otherwise set forth in this Lease) during the ensuing nine (9) month period so long as the Proposed Transfer price is equal to or greater than the Lessee Sale Price last offered to County and upon no more favorable material terms to the assignee. In the event of a proposed Sublease or other permitted assignment of less than all of the Premises, County's election shall pertain to such portion of the Premises subject to the proposed Sublease or assignment and, in the event that County elects to acquire such portion of Lessee's interest in the Premises, Lessee's Annual Minimum Rent shall be proportionally reduced and Lessee's obligation to pay Percentage Rent shall pertain only to the amounts derived from the portion of the Premises retained by Lessee. In the event that County elects to recapture all or any portion of the Premises as provided herein, Lessee agrees to execute promptly a termination agreement and such other documentation as may be reasonably necessary to evidence the termination of this Lease, to set a termination date and to prorate rent and other charges with respect to the termination. County's rights pursuant to this subsection 11.2.4 shall not apply to Financing Events or those events identified in subsection 4.6.2 of this Lease.

11.2.5. County Credits Toward Purchase Price. In the event that County or its assignee elects to exercise the County Option, it shall receive the following credits toward the Lessee Sale Price: (1) the Net Proceeds Share which would be payable to

County in the event that a third party were to purchase the interest offered at the Lessee Sale Price and (2) an amount which represents unpaid Annual Minimum Rent, Percentage Rent, and all other amounts payable under the Lease, if any, with late fees and interest as provided herein, from the end of the period most recently subject to County audit through the date of the purchase of the interest by County. In lieu of the credit described in (2) above, Lessee may provide County with a letter of credit or other security satisfactory to County to secure the payment of such unpaid amounts when finally determined by County. During the term of the County Option, Lessee shall cause to be available to County all books and records reasonably necessary in order to determine the amount of such unpaid Annual Minimum Rent, Percentage Rent, and other amounts payable under the Lease. In the event that County or its assignee exercises the County Option, but the transaction fails to close due to a failure of the parties to agree upon an appropriate allowance for such unpaid Annual Minimum Rent, Percentage Rent, and other amounts or appropriate security for the payment thereof, then County shall have no obligation to pay or credit to Lessee the County Option Price.

11.3 Terms Binding Upon Successors, Assigns and Sublessees. Except as otherwise specifically provided for herein, each and all of the provisions, agreements, terms, covenants, and conditions herein contained to be performed, fulfilled, observed, and kept by Lessee hereunder shall be binding upon the heirs, executors, administrators, successors, and assigns of Lessee, and all rights, privileges and benefits arising under this Lease in favor of Lessee shall be available in favor of its heirs, executors, administrators, successors, and assigns. Notwithstanding the foregoing, no assignment or subletting by or through Lessee in violation of the provisions of this Lease shall vest any rights in any such assignee or Sublessee. Any approved assignment of this Lease shall release the assignor of all liability arising due to actions or omissions on or after the effective date of such assignment, provided the assignee assumes all of such liability, including without limitation the obligation of assignee to cure any defaults and delinquencies under this Lease and to pay County Percentage Rent and any other amounts attributable to the period prior to the assignment, but not discovered by County or the assignee until after the assignment; provided, further, the assignor shall not be relieved of any liability for the payment of the Administrative Charge or the required portion of any Net Proceeds Share or Net Refinancing Proceeds which arise upon such assignment as provided herein.

## 12. ENCUMBRANCES

### 12.1 Financing Events.

12.1.1 Definitions. For the purposes of this Lease, including without limitation the provisions of Sections 4.6 through 4.8 hereof: (i) a "Financing Event" shall mean any financing or refinancing consummated by Lessee or by the holders of partnership interests or other direct or indirect ownership interests in Lessee (collectively, "Ownership Interests"), whether with private or institutional investors or lenders, where such financing or refinancing is an Encumbrance (as defined below); for purposes of subsection 12.1.2 below and Sections 4.6 through 4.8 above, a "Financing Event" shall also include all of the foregoing actions involving the granting of a mortgage, deed of trust or other security interest in a Major Sublease; and (ii) an "Encumbrance" shall mean any direct or indirect grant, pledge, assignment, transfer, mortgage, hypothecation, grant

of control, grant of security interest, or other encumbrance, of or in all or any portion of (A) Lessee's interest under this Lease and the estate so created (including without limitation a direct or indirect assignment of Lessee's right to receive rents from subtenants) or (B) Ownership Interests if an absolute assignment from the holder of such Ownership Interests to the holder of the Encumbrance would have required County's consent under this Lease, to a lender (upon County approval of the Encumbrance and consummation thereof, the "Encumbrance Holder") as security for a loan. The term "Encumbrance Holder" shall also be deemed to include any successors and assigns of such Encumbrance Holder which have succeeded by assignment or otherwise to any rights, interests or liabilities of the Encumbrance Holder with respect to the Encumbrance, or any designee which has been designated by the Encumbrance Holder to exercise any rights or remedies under the Encumbrance or to take title to the leasehold estate under this Lease or to Ownership Interests, and such permitted successors, assigns or designees shall enjoy all of the rights and protections given to Encumbrance Holders under this Lease; provided, however, no successor, assign or designee of an Encumbrance Holder that is affiliated with Lessee or any person or entity with a direct or indirect ownership interest in Lessee shall be entitled to any of the rights or protections granted to Encumbrance Holders under this Lease. The term "Equity Encumbrance Holder" shall mean an Encumbrance Holder holding an Encumbrance with respect to Ownership Interests.

12.1.2 County Approval Required. Lessee may, with the prior written consent of Director, which shall not be unreasonably withheld, and subject to any specific conditions which may be reasonably imposed by Director, consummate one or more Financing Events. Lessee shall submit to Director a preliminary loan package and thereafter a complete set of all proposed transaction documents in connection with each proposed Financing Event. The preliminary loan package shall include the loan commitment (or the so-called "loan application" if the loan commitment is styled as a loan application) and any other documents, materials or other information reasonably requested by Director. Lessee shall have the right, but not the obligation, to include draft loan documents in the preliminary loan package. Director shall have sixty (60) days to grant or withhold approval of the preliminary loan package. Director shall have sixty (60) days after receipt of substantially complete loan documents conforming to the approved preliminary loan package in which to grant or withhold final approval of the Financing Event; provided, however, that if the preliminary loan package included draft loan documents, then the foregoing sixty (60) day period shall be reduced to thirty (30) days. If not approved by Director in writing within the foregoing periods, the proposed Financing Event shall be deemed disapproved by Director (and, if so requested in writing by Lessee), Director shall within thirty (30) days of such request deliver to Lessee a written description of Director's objections to said proposed Financing Event). Lessee shall reimburse County for County's Actual Cost incurred in connection with its review of the proposed Financing Event. One copy of any and all security devices or instruments as finally executed or recorded by the parties in connection with any approved Encumbrance shall be filed with Director not later than seven (7) days after the effective date thereof. The same rights and obligations set forth above in this subsection

12.1.2 shall inure to the benefit of and shall be binding upon any holder of Ownership Interests with respect to any proposed Financing Event involving Ownership Interests.

12.2 Consent Requirements In The Event of a Foreclosure Transfer.

12.2.1 Definitions. As used herein, a "Foreclosure Transfer" shall mean any transfer of the entire leasehold estate under this Lease or of all of the Ownership Interests in Lessee pursuant to any judicial or nonjudicial foreclosure or other enforcement of remedies under or with respect to an Encumbrance, or by voluntary deed or other transfer in lieu thereof. A "Foreclosure Transferee" shall mean any transferee (including without limitation an Encumbrance Holder) which acquires title to the entire leasehold estate under this Lease or to all of the Ownership Interests in Lessee pursuant to a Foreclosure Transfer. An "Equity Foreclosure Transferee" shall mean a Foreclosure Transferee whose acquired interest consists of all of the Ownership Interests in Lessee.

12.2.2 Foreclosure Transfer. The consent of County shall not be required with respect to any Foreclosure Transfer. In addition, no Foreclosure Transfer, and no single subsequent transfer by an Encumbrance Holder following a Foreclosure Transfer pursuant to subsection 12.2.3, shall trigger the obligation to pay a Net Proceeds Share to County or any recapture right of County under subsection 11.2.4 of this Lease.

12.2.3 Subsequent Transfer By Encumbrance Holder. For each Foreclosure Transfer in which the Foreclosure Transferee is an Encumbrance Holder, with respect to a single subsequent transfer of this Lease or the Ownership Interests (as applicable) by such Encumbrance Holder to any third party, (i) County's consent to such transfer shall be required, but shall not be unreasonably withheld or delayed, and the scope of such consent (notwithstanding anything in this Lease to the contrary) shall be limited to County's confirmation (which must be reasonable) that the Lessee following such transfer has sufficient financial capability to perform its remaining obligations under this Lease as they come due, along with any obligation of Lessee for which the Foreclosure Transferee from whom its receives such transfer is released under subsection 12.3.1 below, and (ii) such transferee (other than a transferee of Ownership Interests) shall expressly agree in writing to assume and to perform all of the obligations under this Lease, other than Excluded Defaults (as defined below). For clarification purposes, the right to a single transfer under this Section shall apply to each Foreclosure Transfer in which the Foreclosure Transferee is an Encumbrance Holder, so that there may be more than one "single transfer" under this Section.

12.3 Effect of Foreclosure. In the event of a Foreclosure Transfer, the Encumbrance Holder shall forthwith give notice to County in writing of such transfer setting forth the name and address of the Foreclosure Transferee and the effective date of such transfer, together with a copy of the document by which such transfer was made.

12.3.1 Any Encumbrance Holder which is a commercial bank, savings bank, savings and loan institution, insurance company, pension fund, investment bank, opportunity fund, mortgage conduit, real estate investment trust, commercial finance

lender or other similar financial institution which ordinarily engages in the business of making, holding or servicing commercial real estate loans, including any affiliate thereof (an "Institutional Lender"), shall, upon becoming a Foreclosure Transferee (other than an Equity Foreclosure Transferee), become liable to perform the full obligations of Lessee under this Lease (other than Excluded Defaults as defined below) accruing during its period of ownership of the leasehold. Upon a subsequent transfer of the leasehold in accordance with subsection 12.2.3 above, such Institutional Lender shall be automatically released of any further liability with respect to this Lease, other than for (i) rent payments, property tax payments, reserve account payments and other monetary obligations under specific terms of the Lease that accrue solely during such Institutional Lender's period of ownership of the leasehold, and (ii) Lessee's indemnification obligations under this Lease with respect to matters pertaining to or arising during such Institutional Lender's period of ownership of leasehold title.

12.3.2 Any other Foreclosure Transferee (i.e., other than an Institutional Lender as provided in subsection 12.3.1 above) shall, upon becoming a Foreclosure Transferee (other than an Equity Foreclosure Transferee), become liable to perform the full obligations of Lessee under this Lease (other than Excluded Defaults), subject to possible release of liability upon a subsequent transfer pursuant to Section 11.3 of this Lease.

12.3.3 Following any Foreclosure Transfer which is a transfer of the leasehold interest under the Lease, County shall recognize the Foreclosure Transferee as the Lessee under the Lease and shall not disturb its use and enjoyment of the Premises, and the Foreclosure Transferee shall succeed to all rights of Lessee under this Lease as a direct lease between County and such Foreclosure Transferee, provided that the Foreclosure Transferee cures any pre-existing Event of Default other than any such pre-existing Event of Default that (i) is an incurable non-monetary default, (ii) is a non-monetary default that can only be cured by a prior lessee, (iii) is a non-monetary default that is not reasonably susceptible of being cured by such transferee, or (iv) relates to any obligation of a prior lessee to pay any Net Proceeds Share (collectively, "Excluded Defaults"), and thereafter performs the full obligations of Lessee under this Lease. Pursuant to subsection 12.3.7 below, following any Foreclosure Transfer which is a transfer of Ownership Interests, the foregoing rights under this subsection 12.3.3 shall also inure to the benefit of the Lessee.

12.3.4 No Encumbrance Holder shall become liable for any of Lessee's obligations under this Lease unless and until such Encumbrance Holder becomes a Foreclosure Transferee with respect to Lessee's leasehold interest under the Lease.

12.3.5 No Foreclosure Transfer, and no single subsequent transfer by an Encumbrance Holder following a Foreclosure Transfer pursuant to subsection 12.2.3, shall trigger (i) any obligation to pay an Administrative Charge nor any Net Proceeds Share, (ii) any recapture right on the part of County, or (iii) any termination right under this Lease. Any Foreclosure Transfer, and any single subsequent transfer by an Encumbrance Holder following a Foreclosure Transfer pursuant to subsection 12.2.3, shall be deemed to be excluded from the definitions of "Change of Ownership" for all purposes of this Lease. For clarification purposes, the "single subsequent transfer"

referred to above applies to each Foreclosure Transfer in which the Foreclosure Transferee is an Encumbrance Holder (as more fully explained in subsection 12.2.3), so that there may be more than one "single subsequent transfer" benefited by this Section.

12.3.6 In the event that an Institutional Lender becomes a Foreclosure Transferee, all obligations with respect to the construction work described in Sections 5.1, 5.14 or 5.15 above shall be tolled for a period of time, not to exceed twelve months, until such Institutional Lender completes a subsequent transfer of its foreclosed interest in the Lease or Ownership Interests, provided that such Institutional Lender is making commercially reasonable and diligent efforts to market and sell its foreclosed interest. Nothing in this subsection 12.3.6 shall be construed as a limit or outside date on any cure periods provided to Encumbrance Holders under this Lease.

12.3.7 Following a Foreclosure Transfer with respect to all of the Ownership Interests in Lessee, (i) any and all rights, privileges and/or liability limitations afforded to Foreclosure Transferees in this Article 12 or any other provision of this Lease shall also be afforded to Lessee from and after such Foreclosure Transfer, to the same extent as if the Foreclosure Transferee had acquired the leasehold interest of Lessee directly and became the Lessee under this Lease, and (ii) if the Foreclosure Transferee was also an Equity Encumbrance Holder, then any and all rights, privileges and/or liability limitations afforded to Foreclosure Transferees who are Encumbrance Holders in this Article 12 or any other provision of this Lease shall also be afforded to Lessee from and after such Foreclosure Transfer, to the same extent as if the Foreclosure Transferee had acquired the leasehold interest of Lessee directly and became the Lessee under this Lease.

12.4 No Subordination. County's rights in the Premises and this Lease, including without limitation County's right to receive Annual Minimum Rent and Percentage Rent, shall not be subordinated to the rights of any Encumbrance Holder. Notwithstanding the foregoing, an Encumbrance Holder shall have all of the rights set forth in the security instrument creating the Encumbrance, as approved by County in accordance with subsection 12.1.2, to the extent that such rights are not inconsistent with the terms of this Lease, including the right to commence an action against Lessee for the appointment of a receiver and to obtain possession of the Premises under and in accordance with the terms of said Encumbrance, provided that all obligations of Lessee hereunder shall be kept current, including but not limited to the payment of rent and curing of all defaults or Events of Default hereunder (other than Excluded Defaults or as otherwise provided herein).

12.5 Modification or Termination of Lease. This Lease shall not be modified or amended without the prior written consent in its sole discretion of each then existing Encumbrance Holder with respect to Lessee's entire leasehold interest in this Lease or all of the Ownership Interests in Lessee. Further, this Lease may not be surrendered or terminated (except with respect to the Partial Termination Premises pursuant to Section 2.2 above, or in accordance with the provisions of this Article 12) without the prior written consent of each such Encumbrance Holder in its sole discretion. No such modification, amendment, surrender or termination (other than a termination with respect to the Partial Termination Premises pursuant to Section 2.2 above, or in accordance with the provisions of this Article 12) without the prior

written consent of each such then existing Encumbrance Holder shall be binding on any such Encumbrance Holder or any other person who acquires title to its foreclosed interest pursuant to a Foreclosure Transfer.

12.6 Notice and Cure Rights of Encumbrance Holders and Major Sublessees.

12.6.1 Right to Cure. Each Encumbrance Holder and Major Sublessee shall have the right, at any time during the term of its Encumbrance or Major Sublease, as applicable, and in accordance with the provisions of this Article 12, to do any act or thing required of Lessee in order to prevent termination of Lessee's rights hereunder, and all such acts or things so done hereunder shall be treated by County the same as if performed by Lessee.

12.6.2 Notice of Default. County shall not exercise any remedy available to it upon the occurrence of an Event of Default (other than exercising County's self-help remedies pursuant to Section 13.5 or imposing the daily payment set forth in Section 10.2), and no such exercise shall be effective, unless it first shall have given written notice of such default to each and every then existing Major Sublessee and Encumbrance Holder which has notified Director in writing of its interest in the Premises or this Lease and the addresses to which such notice should be delivered. Such notice shall be sent simultaneously with the notice or notices to Lessee. An Encumbrance Holder or Major Sublessee shall have the right and the power to cure the Event of Default specified in such notice in the manner prescribed herein. If such Event or Events of Default are so cured, this Lease shall remain in full force and effect. Notwithstanding any contrary provision hereof, the Lender's cure rights set forth in this Section 12.6 shall not delay or toll the County's right to impose the daily payment for Lessee breaches set forth in Section 10.2.

12.6.3 Manner of Curing Default. Events of Default may be cured by an Encumbrance Holder or Major Sublessee in the following manner:

(a) If the Event of Default is in the payment of rental, taxes, insurance premiums, utility charges or any other sum of money, an Encumbrance Holder or the Major Sublessee may pay the same, together with any Late Fee or interest payable thereon, to County or other payee within thirty five (35) days after its receipt of the aforesaid notice of default. If, after such payment to County, Lessee pays the same or any part thereof to County, County shall refund said payment (or portion thereof) to such Encumbrance Holder or Major Sublessee.

(b) If the Event of Default cannot be cured by the payment of money, but is otherwise curable, the default may be cured by an Encumbrance Holder or Major Sublessee as follows:

(1) The Encumbrance Holder or Major Sublessee may cure the default within sixty (60) days after the end of Lessee's cure period as provided in Section 13.1 hereof (or, if the default involves health, safety or sanitation issues, County

may by written notice reduce such sixty (60) day period to thirty (30) days, such 60 or 30 day period, as applicable, being referred to herein as the "initial cure period"), provided, however, if the curing of such default reasonably requires activity over a longer period of time, the initial cure period shall be extended for such additional time as may be reasonably necessary to cure such default, so long as the Encumbrance Holder or Major Sublessee commences a cure within the initial cure period and thereafter continues to use due diligence to perform whatever acts may be required to cure the particular default. In the event Lessee commences to cure the default within Lessee's applicable cure period and thereafter fails or ceases to pursue the cure with due diligence, the Encumbrance Holder's and Major Sublessee's initial cure period shall commence upon the later of the end of Lessee's cure period or the date upon which County notifies the Encumbrance Holder and/or Major Sublessee that Lessee has failed or ceased to cure the default with due diligence.

(2) With respect to an Encumbrance Holder, but not a Major Sublessee, if before the expiration of the initial cure period, said Encumbrance Holder notifies County of its intent to commence foreclosure of its interest, and within sixty (60) days after the mailing of said notice, said Encumbrance Holder (i) actually commences foreclosure proceedings and prosecutes the same thereafter with due diligence, the initial cure period shall be extended by the time necessary to complete such foreclosure proceedings, or (ii) if said Encumbrance Holder is prevented from commencing or continuing foreclosure proceedings by any bankruptcy stay, or any order, judgment or decree of any court or regulatory body of competent jurisdiction, and said Encumbrance Holder diligently seeks release from or reversal of such stay, order, judgment or decree, the initial cure period shall be extended by the time necessary to obtain such release or reversal and thereafter to complete such foreclosure proceedings. Within thirty (30) days after a Foreclosure Transfer is completed, the Foreclosure Transferee shall (if such default has not been cured) commence to cure, remedy or correct the default and thereafter diligently pursue such cure until completed in the same manner as provided in subsection (a) above. The Encumbrance Holder shall have the right to terminate its foreclosure proceeding, and the extension of any relevant cure period shall lapse, in the event of a cure by Lessee.

## 12.7 New Lease.

12.7.1 Obligation to Enter Into New Lease. In the event that this Lease is terminated by reasons of bankruptcy, assignment for the benefit of creditors, insolvency or any similar proceedings, operation of law, an Excluded Default or other event beyond the reasonable ability of an Encumbrance Holder to cure or remedy, or if the Lease otherwise terminates for any reason, except in each case other than the partial termination of the Lease with respect to the Partial Termination Premises pursuant to Section 2.2, County shall, upon the written request of any Encumbrance Holder with respect to Lessee's entire leasehold estate under this Lease or all of the Ownership Interests in Lessee (according to the priority described below if there are multiple Encumbrance



Holders), enter into a new lease (which shall be effective as of the date of termination of this Lease) with the Encumbrance Holder or an affiliate thereof for the then remaining Term of this Lease on the same terms and conditions as shall then be contained in this Lease, provided that the Encumbrance Holder cures all then existing monetary defaults under this Lease, and agrees to commence a cure of all then existing non-monetary Events of Default within sixty (60) days after the new lease is entered into, and thereafter diligently pursues such cure until completion. In no event, however, shall the Encumbrance Holder be obligated to cure any Excluded Defaults. County shall notify the most junior Encumbrance Holder of a termination described in this Section 12.7 within thirty (30) days after the occurrence of such termination, which notice shall state (i) that the Lease has terminated in accordance with Section 12.7 of this Lease, and (ii) that such Encumbrance Holder has sixty (60) days following receipt of such notice within which to exercise its right to a new lease under this Section 12.7, or else it will lose such right. An Encumbrance Holder's election shall be made by giving County written notice of such election within sixty (60) days after such Encumbrance Holder has received the above-described written notice from the County. Within a reasonable period after request therefor, County shall execute and return to the Encumbrance Holder any and all documents reasonably necessary to secure or evidence the Encumbrance Holder's interest in the new lease or the Premises. From and after the effective date of the new lease, the Encumbrance Holder (or its affiliate) shall have the same rights to a single transfer that are provided in subsection 12.2.3 above, and shall enjoy all of the other rights and protections that are provided to a Foreclosure Transferee in this Article 12. Any other subsequent transfer or assignment of such new lease shall be subject to all of the requirements of Article 11 of this Lease. If there are multiple Encumbrance Holders, this right shall inure to the most junior Encumbrance Holder in order of priority; provided, however, if such junior Encumbrance Holder shall accept the new lease, the priority of each of the more senior Encumbrance Holders shall be restored in accordance with all terms and conditions of such Encumbrances(s). If a junior Encumbrance Holder does not elect to accept the new lease within thirty (30) days of receipt of notice from County, the right to enter into a new lease shall be provided to the next most junior Encumbrance Holder, under the terms and conditions described herein, until an Encumbrance Holder either elects to accept a new lease, or no Encumbrance Holder so elects.

**12.7.2 Priority of New Lease.** The new lease made pursuant to this Section 12.7 shall be prior to any mortgage or other lien, charge or encumbrance (except for easements or other matters to which this Lease is subject) on County's fee interest in the Premises (except for easements or other matters to which this Lease is subject), and any future fee mortgagee or other future holder of any lien on the fee interest in the Premises is hereby given notice of the provisions hereof.

**12.8 Holding of Funds.** Any Encumbrance Holder with respect to Lessee's entire leasehold interest in this Lease or all of the Ownership Interests in Lessee that is an Institutional Lender shall have the right to hold and control the disbursement of (i) any insurance or condemnation proceeds to which Lessee is entitled under this Lease and that are required by the terms of this Lease to be applied to restoration of the improvements on the Premises (provided that such funds shall be used for such restoration in accordance with the requirements of the

Lease), and (ii) any funds required to be held in the Capital Improvement Fund or Renovation Fund (provided that such funds shall be used for the purposes required by this Lease). If more than one such Encumbrance Holder desires to exercise the foregoing right, the most senior Encumbrance Holder shall have priority in the exercise of such right.

12.9 Participation in Certain Proceedings and Decisions. Any Encumbrance Holder shall have the right to intervene and become a party in any arbitration, litigation, condemnation or other proceeding affecting this Lease. Lessee's right to make any election or decision under this Lease with respect to any condemnation settlement, insurance settlement or restoration of the Premises following a casualty or condemnation shall be subject to the prior written approval of each then existing Encumbrance Holder.

12.10 Fee Mortgages and Encumbrances. Any mortgage, deed of trust or other similar encumbrance granted by County upon its fee interest in the Premises shall be subject and subordinate to all of the provisions of this Lease and to all Encumbrances. County shall require each such fee encumbrance holder to confirm the same in writing (in a form reasonably approved by each Encumbrance Holder or its title insurer) as a condition to granting such encumbrance, although the foregoing subordination shall be automatic and self-executing whether or not such written confirmation is obtained.

12.11 No Merger. Without the written consent of each Encumbrance Holder, the leasehold interest created by this Lease shall not merge with the fee interest in all or any portion of the Premises, notwithstanding that the fee and leasehold interests are held at any time by the same person or entity.

### 13. DEFAULT.

13.1 Events of Default. The following are deemed to be "Events of Default" hereunder:

13.1.1. Monetary Defaults. The failure of Lessee to pay the rentals due, or make any other monetary payments required under this Lease, within five (5) days after written notice that said payments are overdue. Lessee may cure such nonpayment by paying the amount overdue, with interest thereon and the applicable Late Fee, within such five (5) day period.

13.1.2. Failure to Comply with Construction Obligations. The failure of Lessee to comply with the obligations and timeframes set forth in Article 5 of this Lease if not cured within ten (10) days after written notice of such failure, if no other notice of such failure is otherwise required hereunder.

13.1.3. Maintenance of Security Deposit. The failure of Lessee to maintain and/or replenish the Security Deposit required pursuant to Article 8 of this Lease if not cured within five (5) days after written notice of such failure.

13.1.4. Failure to Perform Other Obligations. The failure of Lessee to keep, perform, and observe any and all other promises, covenants, conditions and agreements

set forth in this Lease, including without limitation the obligation to maintain adequate accounting and financial records, within thirty five (35) days after written notice of Lessee's failure to perform from Director; provided, however, that where Lessee's performance of such covenant, condition or agreement is not reasonably susceptible of completion within such thirty five (35) day period and Lessee has in good faith commenced and is continuing to perform the acts necessary to perform such covenant, condition or agreement within such thirty five (35) day period, County will not exercise any remedy available to it hereunder for so long as Lessee uses reasonable due diligence in continuing to pursue to completion the performance such covenant, condition or agreement and so completes performance within a reasonable time.

13.1.5. Nonuse of Premises. The abandonment, vacation, or discontinuance of use of the Premises, or any substantial portion thereof, for a period of thirty five (35) days, except when prevented by Force Majeure or when closed for renovations or repairs required or permitted to be made under this Lease.

Any notice required to be given by County pursuant to subsections 13.1.1 through and including 13.1.4 shall be in addition to, and not in lieu of, any notice required under Section 1161 of the California Code of Civil Procedure.

13.2 Limitation on Events of Default. Lessee shall not be considered in default as to any provision of this Lease when such default is the result of or pursuant to, any process, order, or decree of any court or regulatory body of competent jurisdiction, or any other circumstances which are physically impossible to cure provided Lessee uses due diligence in pursuing whatever is required to obtain release from or reversal of such process, order, or decree or is attempting to remedy such other circumstances preventing its performance.

13.3 Remedies. Upon the occurrence of an Event of Default, and subject to the rights of any Encumbrance Holder or Major Sublessee to cure such Event of Default as provided in Section 12.6 hereof, County shall have, in addition to any other remedies in law or equity, the following remedies which are cumulative:

13.3.1. Terminate Lease. County may terminate this Lease by giving Lessee written notice of termination. On the giving of the notice, all Lessee's rights in the Premises and in all Improvements shall terminate. Promptly after notice of termination, Lessee shall surrender and vacate the Premises and all Improvements in broom-clean condition, and County may re-enter and take possession of the Premises and all remaining Improvements and, except as otherwise specifically provided in this Lease, eject all parties in possession or eject some and not others, or eject none. Termination under this subsection shall not relieve Lessee from the payment of any sum then due to County or from any claim for damages against Lessee as set forth in subsection 13.4.3, or from Lessee's obligation to remove Improvements at County's election in accordance with Article 2. County agrees to use reasonable efforts to mitigate damages.

13.3.2. Keep Lease in Effect. Without terminating this Lease, so long as County does not deprive Lessee of legal possession of the Premises and allows Lessee to assign or sublet subject only to County's rights set forth herein, County may continue this Lease

in effect and bring suit from time to time for rent and other sums due, and for Lessee's breach of other covenants and agreements herein. No act by or on behalf of County under this provision shall constitute a termination of this Lease unless County gives Lessee written notice of termination. It is the intention of the parties to incorporate the provisions of California Civil Code Section 1951.4 by means of this provision.

13.3.3. Termination Following Continuance. Even though it may have kept this Lease in effect pursuant to subsection 13.3.2, thereafter County may elect to terminate this Lease and all of Lessee's rights in or to the Premises unless prior to such termination Lessee shall have cured the Event of Default or shall have satisfied the provisions of Section 13.2, hereof. County agrees to use reasonable efforts to mitigate damages.

13.4 Damages. Should County elect to terminate this Lease under the provisions of the foregoing Section, County shall be entitled to recover from Lessee as damages:

13.4.1. Unpaid Rent. The worth, at the time of the award, of the unpaid rent that had been earned at the time of termination of this Lease;

13.4.2. Post-Termination Rent. The worth, at the time of the award, of the unpaid rent that would have been earned under this Lease after the date of termination of this Lease until the date Lessee surrenders possession of the Premises to County; and

13.4.3. Other Amounts. The amounts necessary to compensate County for the sums and other obligations which under the terms of this Lease become due prior to, upon or as a result of the expiration of the Term or sooner termination of this Lease, including without limitation, those amounts of unpaid taxes, insurance premiums and utilities for the time preceding surrender of possession, the cost of removal of rubble, debris and other above-ground Improvements, attorney's fees, court costs, and unpaid Administrative Charges, Net Proceeds Shares and Net Refinancing Proceeds.

13.5 Others' Right to Cure Lessee's Default. County (and any Encumbrance Holder or Major Sublessee, as provided in the last sentence of this section), at any time after Lessee's failure to perform any covenant, condition or agreement contained herein beyond any applicable notice and cure period, may cure such failure at Lessee's cost and expense. If, after delivering to Lessee two (2) or more written notices with respect to any such default, County at any time, by reason of Lessee's continuing failure, pays or expends any sum, Lessee shall immediately pay to County the lesser of the following amounts: (1) twice the amount expended by County to cure such default and (2) the amount expended by County to cure such default, plus one thousand dollars (\$1,000). To the extent practicable, County shall give any Encumbrance Holders or Major Sublessees the reasonable opportunity to cure Lessee's default prior to County's expenditure of any amounts thereon.

13.6 Default by County. County shall be in default in the performance of any obligation required to be performed by County under this Lease if County has failed to perform such obligation within thirty (30) days after the receipt of notice from Lessee specifying in detail County's failure to perform; provided, however, that if the nature of County's obligation is such that more than thirty (30) days are required for its performance, County shall not be deemed in

default if it shall commence such performance within thirty (30) days and thereafter diligently pursues the same to completion. Lessee shall have no rights as a result of any default by County until Lessee gives thirty (30) days notice to any person having a recorded interest pertaining to County's interest in this Lease or the Premises. Such person shall then have the right to cure such default, and County shall not be deemed in default if such person cures such default within thirty (30) days after receipt of notice of the default, or such longer time as may be reasonably necessary to cure the default. Notwithstanding anything to the contrary in this Lease, County's liability to Lessee for damages arising out of or in connection with County's breach of any provision or provisions of this Lease shall not exceed the value of County's equity interest in the Premises and its right to insurance proceeds in connection with the policies required under Article 9 hereof.

#### 14. ACCOUNTING.

14.1 Maintenance of Records and Accounting Method. In order to determine the amount of and provide for the payment of the Annual Minimum Rent, Percentage Rent, Administrative Charge, Net Proceeds Share, Net Refinancing Proceeds and other sums due under this Lease, Lessee and all Sublessees shall at all times during the Term of this Lease, and for thirty six (36) months thereafter, keep, or cause to be kept, locally, to the reasonable satisfaction of Director, true, accurate, and complete records and double-entry books of account for the current and five (5) prior Accounting Years, such records to show all transactions relative to the conduct of operations, and to be supported by data of original entry. Such records shall detail transactions conducted on or from the Premises separate and apart from those in connection with Lessee's (or sublessee's or licensee's, as appropriate) other business operations, if any. Lessee shall utilize the accrual method of accounting with respect to its preparation of the reports and maintenance of records required herein or, at its option, may utilize the cash method of accounting, provided Lessee reconciles its filings, records and reports to an accrual method to the extent requested by County; notwithstanding the foregoing, Lessee shall be permitted to make monthly payments of Percentage Rent using the cash method of accounting to determine Gross Receipts, provided that Lessee provides County with an annual reconciliation of its cash basis Gross Receipts to the accrual method (together with payment of any additional Percentage Rent due).

14.2 Cash Registers. To the extent retail sales are conducted on the Premises, or other cash or credit sales of goods or services are conducted, all such sales shall be recorded by means of cash registers or computers which automatically issue a customer's receipt or certify the amount recorded in a sales slip. Said cash registers shall in all cases have locked-in sales totals and transaction counters which are constantly accumulating and which cannot, in either case, be reset, and in addition thereto, a tape (or other equivalent security mechanism) located within the register on which transaction numbers and sales details are imprinted. Beginning and ending cash register readings shall be made a matter of daily record.

Lessee shall cause to be implemented point of sale systems which can accurately verify all sales for audit purposes and customer review purposes, which system shall be submitted to the Director in advance of installation for his approval, which approval will not be unreasonably withheld.

The requirements of this paragraph may be waived or modified in advance by Director upon submission by Lessee of a substitute plan acceptable to Director for recording sales and other income.

Lessee's obligations set forth in this Section 14.2 include Lessee's obligation to insure that Lessee's sublessees, licensees, permittees, concessionaires and any other occupants of any portion of the Premises keep records sufficient to permit County and County's auditors to determine the proper levels of Annual Minimum Rent, Percentage Rent, Administrative Charge, Net Proceeds Share, Net Refinancing Proceeds and other sums due under this Lease.

14.3 Statement; Payment. No later than the fifteenth (15th) day of each calendar month, Lessee shall render to County a detailed statement showing Gross Receipts during the preceding calendar month, together with its calculation of the amount payable to County under Sections 4.2 through 4.8 inclusive, and shall accompany same with remittance of amount so shown to be due.

14.4 Availability of Records for Inspector's Audit. Books of account and records hereinabove required shall be kept or made available at the Premises or at another location within Los Angeles County, and County and other governmental authorities shall have the right at any reasonable times to examine and audit said books and records, without restriction, for the purpose of determining the accuracy thereof and of the monthly statements of Gross Receipts derived from occupancy of the Premises and the compliance of Lessee with the terms of this Lease and other governmental requirements. This Section 14.4 shall survive the expiration of the Term or other termination of this Lease for thirty six (36) months after such expiration or termination.

14.4.1. Entry by County. County and its duly authorized representatives or agents may enter upon the Premises at any and all reasonable times during the Term of this Lease for the purpose of determining whether or not Lessee is complying with the terms and conditions hereof, or for any other purpose incidental to the rights of County.

14.5 Cost of Audit. In the event that, for any reason, Lessee does not make available its (or its sublessee's or licensee's) original records and books of account at the Premises or at a location within Los Angeles County, Lessee agrees to pay all expenses incurred by County in conducting any audit at the location where said records and books of account are maintained. In the event that any audit discloses a discrepancy in County's favor of greater than two percent (2%) of the revenue due County for the period audited, then Lessee shall pay County audit contract costs, together with the amount of any identified deficiency, with interest thereon and Late Fee provided by Section 4.5.

14.6 Additional Accounting Methods. County may require the installation of any additional accounting methods or machines which are typically used by major office buildings and major parking service companies and which County reasonably deems necessary if the system then being used by Lessee does not adequately verify sales for audit or customer receipt purposes.

14.7 Accounting Year. The term "Accounting Year" as used herein shall mean each calendar year during the Term.

14.8 Annual Financial Statements. Within six (6) months after the end of each Accounting Year or, at Lessee's election, after the completion of Lessee's fiscal year, Lessee shall deliver to County a set of audited and certified financial statements prepared by a Certified Public Accountant who is a member of the American Institute of Certified Public Accountants and is satisfactory to County, setting forth Lessee's financial condition and the result of Lessee's operations for such Accounting Year and shall include a certification of and unqualified opinion concerning Lessee's Gross Receipts (including a breakdown by category). All financial statements prepared by or on behalf of Lessee shall be prepared in a manner that permits County to determine the financial results of operations in connection with Lessee's activities at, from or relating to the Premises, notwithstanding that Lessee may have income and expenses from other activities unrelated to its activities on the Premises.

14.9 Accounting Obligations of Sublessees. Lessee shall cause all sublessees, licensees, concessionaires and others conducting business operations on or from the Premises to comply with all terms of this Article 14 with respect to the maintenance, form, availability and methodology of accounting records and the delivery to County of audited certified financial statements and unqualified opinions as to Gross Receipts.

14.10 Inadequacy of Records. In the event that Lessee or its sublessees, licensees or concessionaires, as appropriate, fails to keep the records required by this Article 14 such that a Certified Public Accountant is unable to issue an unqualified opinion as to Gross Receipts, such failure shall be deemed a breach of this Lease by Lessee. In addition to the other remedies available to County at law or equity as a result of such breach, County may prepare a calculation of the Percentage Rent payable by Lessee during the period in which the accounting records were inadequately maintained. Such calculation may be based on the past Gross Receipts levels on or from the Premises, the past or present level of Gross Receipts experienced by tenants of comparable leaseholds in Marina del Rey with comparable business operations, or any other method as determined by Director and shall utilize such methodology as Director deems reasonable. Within five (5) days after receipt of County's determination of Percentage Rent due, if any, Lessee shall pay such Percentage Rent, together with a late fee of six percent (6%) and interest to the date of payment at the Applicable Rate from the date upon which each unpaid installment of Percentage Rent was due, together with County's Actual Cost in connection with the attempted audit of the inadequate records and the reconstruction and estimation of Gross Receipts and the calculation of Percentage Rent due.

## 15. MISCELLANEOUS.

15.1 Quiet Enjoyment. Lessee, upon performing its obligations hereunder, shall have the quiet and undisturbed possession of the Premises throughout the Term of this Lease, subject, however, to the terms and conditions of this Lease.

15.2 Time is of the Essence. Except as specifically otherwise provided for in this Lease, time is of the essence of this Lease and applies to all times, restrictions, conditions, and limitations contained herein.

15.3 County Costs. Lessee shall promptly reimburse County for the Actual Costs incurred by County in the review, negotiation, preparation and documentation of this Lease and the term sheets and memoranda that preceded it. The parties acknowledge that Lessee has deposited the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) toward those costs. County shall deliver to Lessee a report detailing such expenditures within ninety (90) days after the Execution Date.

15.4 County Disclosure and Lessee's Waiver.

15.4.1. Disclosures and Waiver.

15.4.1.1. "AS IS". Lessee acknowledges that it is currently in possession of the Existing Premises and that Lessee or its predecessor-in-interest has continuously occupied and/or managed and operated the Existing Premises since 1966. Lessee accepts the Premises in their present condition notwithstanding the fact that there may be certain defects in the Premises, whether or not known to either party to this Lease, at the time of the execution of this Lease by Lessee and Lessee hereby represents that it has performed all investigations necessary, including without limitation soils and engineering inspections, in connection with its acceptance of the Premises "AS IS".

15.4.1.2. Lessee acknowledges that it may incur additional engineering and construction costs above and beyond those contemplated by either party to this Lease at the time of the execution hereof and Lessee agrees that, it will make no demands upon County for any construction, alterations, or any kind of labor that may be necessitated in connection therewith.

15.4.1.3. Lessee hereby waives, withdraws, releases, and relinquishes any and all claims, suits, causes of action (other than a right to terminate as otherwise provided in this Lease), rights of rescission, or charges against County, its officers, agents, employees or volunteers which Lessee now has or may have or asserts in the future which are based upon any defects in the physical condition of the Premises and the soil thereon and thereunder, regardless of whether or not said conditions were known at the time of the execution of this instrument.

15.4.1.4. California Civil Code Section 1542 provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.



By initialing this paragraph, Lessee acknowledges that it has read, is familiar with, and waives the provisions of California Civil Code §1542 set forth above, and agrees to all of the provisions of subsection 15.4.1.3 above.

\_\_\_\_\_  
Lessee's Initials

15.4.2. Right of Offset. Lessee acknowledges that the rent provided for in this Lease has been agreed upon in light of Lessee's construction, maintenance and repair obligations set forth herein, and, notwithstanding anything to the contrary provided in this Lease or by applicable law, Lessee hereby waives any and all rights, if any, to make repairs at the expense of County and to deduct or offset the cost thereof from the Annual Minimum Rent, Monthly Minimum Rent, Percentage Rent or any other sums due County hereunder.

15.5 Holding Over. If Lessee holds over after the expiration of the Term for any cause, with or without the express or implied consent of County, such holding over shall be deemed to be a tenancy from month-to-month only, and shall not constitute a renewal or extension of the Term. During any such holdover period, the Minimum Monthly Rent and Percentage Rent in effect at the end of the Term shall be increased to one hundred twenty five percent (125%) of such previously effective amounts. Such holdover shall otherwise be subject to the same terms, conditions, restrictions and provisions as herein contained. Such holding over shall include any time employed by Lessee to remove machines, appliances and other equipment during the time periods herein provided for such removal.

Nothing contained herein shall be construed as consent by County to any holding over by Lessee, and County expressly reserves the right to require Lessee to surrender possession of the Premises to County as provided in this Lease upon the expiration or other termination of this Lease. The provisions of this Section 15.5 shall not be deemed to limit or constitute a waiver of any other rights or remedies of County provided at law or in equity. If Lessee fails to surrender the Premises upon the termination or expiration of this Lease, in addition to any other liabilities to County accruing therefrom, Lessee shall protect, defend, indemnify and hold County harmless from all losses, costs (including reasonable attorneys' fees), damages, claims and liabilities resulting from such failure, including, without limitation, any claims made by any succeeding tenant arising from such failure to surrender, and any lost profits to County resulting therefrom.

15.6 Waiver of Conditions or Covenants. Except as stated in writing by the waiving party, any waiver by either party of any breach of any one or more of the covenants, conditions, terms, and agreements of this Lease shall not be construed to be a waiver of any subsequent or other breach of the same or of any other covenant, condition, term, or agreement of this Lease, nor shall failure on the part of either party to require exact full and complete compliance with any of the covenants, conditions, terms, or agreements of this Lease be construed as in any manner changing the terms hereof or estopping that party from enforcing the full provisions hereof, nor shall the terms of this Lease be changed or altered in any manner whatsoever other than by written agreement of County and Lessee. No delay, failure, or omission of County to re-enter the Premises or of either party to exercise any right, power, privilege, or option, arising

from any default, nor any subsequent acceptance of rent then or thereafter accrued shall impair any such right, power, privilege, or option or be construed as a waiver of or acquiescence in such default or as a relinquishment of any right. No notice to Lessee shall be required to restore or revive "time of the essence" after the waiver by County of any default. Except as specifically provided in this Lease, no option, right, power, remedy, or privilege of either party shall be construed as being exhausted by the exercise thereof in one or more instances.

15.7 Remedies Cumulative. The rights, powers, options, and remedies given County by this agreement shall be cumulative except as otherwise specifically provided for in this Lease.

15.8 Authorized Right of Entry. In any and all cases in which provision is made herein for termination of this Lease, or for exercise by County of right of entry or re-entry upon the Premises, or in case of abandonment or vacation of the Premises by Lessee, Lessee hereby irrevocably authorizes County to enter upon the Premises and remove any and all persons and property whatsoever situated upon the Premises and place all or any portion of said property, except such property as may be forfeited to County, in storage for the account of and at the expense of Lessee.

Lessee agrees to indemnify, defend and save harmless County from any cost, expense, loss or damage arising out of or caused by any such entry or re-entry upon the Premises and the removal of persons and property and storage of such property by County and its agents.

15.9 Place of Payment and Filing. All rentals shall be paid to and all statements and reports herein required and other items deliverable to County hereunder shall be filed with or delivered to the Department. Checks, drafts, letters of credit and money orders shall be made payable to the County of Los Angeles.

15.10 Service of Written Notice or Process. Any notice required to be sent under this Lease shall be in compliance with and subject to this Section 15.10. If Lessee is not a resident of the State of California, or is an association or partnership without a member or partner resident of said State, or is a foreign corporation, Lessee shall file with Director a designation of a natural person residing in the County of Los Angeles, State of California, or a service company, such as CT Corporation, which is authorized to accept service, giving his or its name, residence, and business address, as the agent of Lessee for the service of process in any court action between Lessee and County, arising out of or based upon this Lease, and the delivery to such agent of written notice or a copy of any process in such action shall constitute a valid service upon Lessee.

If for any reason service of such process upon such agent is not possible, then any officer of Lessee may be personally served with such process outside of the State of California and such service shall constitute valid service upon Lessee; and it is further expressly agreed that Lessee is amenable to such process and submits to the jurisdiction of the court so acquired and waives any and all objection and protest thereto.

Written notice addressed to Lessee at the addresses below-described, or to such other address that Lessee may in writing file with Director, shall be deemed sufficient if said notice is delivered personally, by telecopy or facsimile transmission or, provided in all cases

there is a return receipt requested and postage or other delivery charges prepaid, by registered or certified mail posted in the County of Los Angeles, California, Federal Express or DHL, or such other services as Lessee and County may mutually agree upon from time to time. Each notice shall be deemed received and the time period for which a response to any such notice must be given or any action taken with respect thereto (including cure of any prospective Event of Default) shall commence to run from the date of actual receipt of the notice by the addressee thereof in the case of personal delivery, telecopy or facsimile transmission if before 5:00 p.m. on regular business days, or upon the expiration of the third (3rd) business day after such notice is sent from within Los Angeles County in the case of such registered or certified mail as authorized in this Section.

Copies of any written notice to Lessee shall also be simultaneously mailed to any Encumbrance Holder, Major Sublessee or encumbrancer of such Major Sublessee of which County has been given written notice and an address for service. Notice given to Lessee as provided for herein shall be effective as to Lessee notwithstanding the failure to send a copy to such Encumbrance Holder, Major Sublessee or encumbrancer.

As of the date of execution hereof, the persons authorized to receive notice on behalf of County and Lessee are as follows:

COUNTY: Director  
Department of Beaches and Harbors  
Los Angeles County  
13837 Fiji Way  
Marina del Rey, California 90292  
Phone: 310/305-9522  
Fax: 310/821-6345

With a Copy to: Office of County Counsel  
Los Angeles County  
500 West Temple Street  
Los Angeles, California 90012  
Attn: County Counsel  
Phone: 213/974-1801  
Fax: 213/617-7182

LESSEE: Holiday-Panay Way Marina, L.P.  
c/o Goldrich & Kest Industries  
5150 Overland Avenue  
Culver City, California 90230  
Attn: Warren Breslow  
Phone: 310/204-2050  
Fax: 310/204-1900

With a Copy to: Holiday-Panay Way Marina, L.P.  
c/o Goldrich & Kest Industries  
5150 Overland Avenue  
Culver City, California 90230  
Attn: William Yerrick, General Counsel  
Phone: 310/280-5043  
Fax: 310/280-5014

15.11 Interest. In any situation where County has advanced sums on behalf of Lessee pursuant to this Lease, such sums shall be due and payable immediately upon demand, together with interest at the Applicable Rate (unless another rate is specifically provided herein) from the date such sums were first advanced, until the time payment is received. In the event that Lessee repays sums advanced by County on Lessee's behalf with interest in excess of the maximum rate permitted by Applicable Laws, County shall either refund such excess payment or credit it against subsequent installments of Annual Minimum Rent and Percentage Rent.

15.12 Captions. The captions contained in this Lease are for informational purposes only, and are not to be used to interpret or explain the particular provisions of this Lease.

15.13 Attorneys' Fees. In the event of any action, proceeding or arbitration arising out of or in connection with this Lease, whether or not pursued to judgment, the prevailing party shall be entitled, in addition to all other relief, to recover its costs and reasonable attorneys' fees, including without limitation attorneys' fees for County Counsel's services where County is represented by the County Counsel and is the prevailing party, and also including all fees, costs and expenses incurred in executing, perfecting, enforcing and collecting any judgment.

15.14 Amendments. This Lease may only be amended in writing executed by duly authorized officials of Lessee and County. Notwithstanding the foregoing, Director shall have the power to execute such amendments to this Lease as are necessary to implement any arbitration judgment issued pursuant to this Lease. No amendment, other than an amendment to implement an arbitration judgment and other than an amendment to confirm the termination of the Lease with respect to the Partial Termination Premises pursuant to Section 2.2, shall be binding upon an Encumbrance Holder as to which County has been notified in writing, unless the consent of such Encumbrance Holder is obtained with respect to such amendment.

15.15 Time For Director Approvals. Except where a different time period is specifically provided for in this Lease, whenever in this Lease the approval of Director is required, approval shall be deemed not given unless within thirty (30) days after the date of the receipt of the written request for approval from Lessee, Director either (a) approves such request in writing, or (b) notifies Lessee that it is not reasonably possible to complete such review within the thirty (30)-day period, provides a final date for approval or disapproval by Director (the "Extended Time") and approves such request in writing prior to such Extended Time. If Director does not approve such request in writing within such Extended Time, the request shall be deemed to be disapproved.

15.16 Time For County Action. Notwithstanding anything to the contrary contained in this Lease, wherever Director determines that a County action required hereunder necessitates

approval from or an affirmative vote of one or more of County's boards or commissions or County's Board of Supervisors, the time period for County performance of such action shall be extended as is necessary in order to secure such affirmative vote or approval and County shall not be deemed to be in default hereunder in the event that it fails to perform such action within the time periods otherwise set forth herein.

15.17 Estoppel Certificates. Each party agrees to execute, within ten (10) business days after the receipt of a written request therefor from the other party, a certificate stating: (1) that this Lease is in full force and effect and is unmodified (or stating otherwise, if true); (2) that, to the best knowledge of such party, the other party is not then in default under the terms of this Lease (or stating the grounds for default if such be the case); (3) the dates, if any, to which all rental due thereunder has been paid; and (4) whether the certifying party is then aware of any charges, offsets or defenses against the enforcement by the other party of any agreement, covenant or condition hereof to be performed or observed by the certifying party (and, if so, specifying the same). Prospective purchasers and lenders may rely on such statements.

15.18 Indemnity Obligations. Whenever in this Lease there is an obligation to indemnify, hold harmless and/or defend, irrespective of whether or not the obligation so specifies, it shall include the obligation to defend and pay reasonable attorney's fees, reasonable expert fees and court costs.

15.19 Waterfront Promenade. As a part of the Redevelopment Work, Lessee agrees to (i) provide a continuous pedestrian walkway and view piers approved by County ("Promenade") along the entire waterfront portion of the Premises to comply with the intent of the Local Coastal Program's waterfront promenade plan, (ii) replace all fencing on the Premises with new fencing approved by County, (iii) repave all parking areas, and (iv) complete new or refurbished restrooms for the anchorage tenants. The foregoing work is collectively referred to in this Lease as the "Promenade Work." Lessee shall perform the Promenade Work as part of the Redevelopment Work. The facilities to be constructed under this Section 15.19 shall be constructed in accordance with the provisions of Article 5. Lessee shall join the Promenade located on the Premises with the adjacent promenade located on Parcel 20 and repair any damage to the promenade improvements located on Parcel 20 incurred in connection with Lessee's construction of the Promenade under this Lease. County hereby reserves a public easement for access over and use of the Promenade for pedestrian purposes and such other related uses (including, if approved by County bicycling, rollerblading and the like) as may be established by the County from time to time, all in accordance with such rules and regulations as are promulgated from time to time by the County regulating such public use. Lessee shall be responsible for the maintenance and repair of the Promenade in accordance with maintenance and repair standards established by the County from time to time. The exact legal description of the Premises encumbered by the public easement reserved herein shall be established based upon the final as-built drawings for the Promenade to be delivered by Lessee upon the completion thereof in accordance with the terms and provisions of Article 5 of this Lease. At the request of either party such legal description shall be recorded in the Official Records of the County as a supplement to this Lease.

15.20 Parking.

15.20.1 General. As part of the Redevelopment Work Lessee is required to construct the Parking Structure described in Section 5.1 of this Lease. It is contemplated that the New Commercial Building and the new Anchorage Improvements will require the construction of 241 parking spaces. The exact number of parking spaces required by applicable code to serve the New Commercial Building and the new Anchorage Improvements is referred to herein as the "On-Site Parking Spaces." In addition to the On-Site Parking Spaces, Lessee shall construct 112 parking spaces to serve the anchorage improvements located on Parcel 20 (the "Additional Parcel 20 Parking Spaces") and 94 public parking spaces to replace 94 public parking spaces being displaced in connection with the development of Parcel 147 (the "Replacement Parcel 147 Parking Spaces"). The 447 parking spaces required to be contained in the Parking Structure pursuant to Section 5.1 is based on the foregoing parking requirements. If the required number of On-Site Parking Spaces changes, then the total number of parking spaces required to be contained in the Parking Structure shall be adjusted to reflect any such change. The Parking Structure shall be designed and constructed at the sole cost of Lessee. Any cost sharing agreement that Lessee, the Parcel 147 Lessee and/or the Parcel 20 Lessee may have entered into with respect to the cost of the design and construction of the Parking Structure shall be a matter as between Lessee and such other lessees, and shall not limit or otherwise affect Lessee's obligations to County with respect to the construction of the Parking Structure. County shall have no obligation with respect to the cost of the design and construction of the Parking Structure.

15.20.2 Additional Parcel 20 Parking Spaces. County hereby reserves a non-exclusive, irrevocable easement on, over and across the Parking Structure and other portions of the Premises required for access to and from the Parking Structure (including without limitation driveways, ramps, aisles, entrances, exits, sidewalks, stairs, elevators and other Improvements) for vehicular and pedestrian access to and use of the Additional Parcel 20 Parking Spaces for parking purposes for the benefit of the anchorage improvements located on Parcel 20. Lessee shall not have the right to charge County, the Parcel 20 Lessee or any Designee (as defined below) for the use of the parking set forth in this subsection 15.20.2, except that during any period during which Parcel 20 continues to be leased to Parcel 20 Lessee, Lessee and such Parcel 20 Lessee shall have the right to mutually agree to a parking charge for the use of the Additional Parcel 20 Parking Spaces, but such charge shall not be binding on County on and after any termination of the lease for Parcel 20 in effect as of the date of this Lease. The Additional Parcel 20 Parking Spaces shall be in a location approved by Director in connection with the approval by Director of the Approved Final Plans, Specifications and Costs, or such other location as approved by Director from time to time. The users of the Additional Parcel 20 Parking Spaces shall have access to and use of the Additional Parcel 20 Parking Spaces 24 hours per day, every day, in accordance with the Operation Plan approved by Director pursuant to subsection 15.20.4 below. The easement described in this subsection 15.20.2 shall run for the benefit of County, as fee owner of the portion of Parcel 20 on which the anchorage improvements are located, and any Parcel 20 Lessee, as lessee of such portion of Parcel 20. The Parcel 20 Lessee (or County if there is no Parcel 20 Lessee) shall have the right to designate users of the anchorage improvements located on Parcel 20 (including visitors) as permitted users of the parking rights set forth

in this subsection 15.20.2 ("Designees"), but this subsection 15.20.2 is not intended to confer any rights (including, without limitation, rights to enforce this subsection 15.20.2 as a third party beneficiary) on any third parties, including any such Designee. At Director's election, County and Lessee shall execute in recordable form a separate parking easement agreement that documents the terms and conditions of the parking rights set forth in this subsection 15.20.2. Parcel 20 Lessee shall indemnify, defend and hold Lessee harmless from and against all claims, losses, liabilities, costs or expenses (including without limitation reasonable attorneys' fees) incurred by Lessee for the death of or injury to persons or damage to property, arising in connection with or related to the use of the easement described in this subsection 15.20.2 by Parcel 20 Lessee or its Designees.

15.20.3 Replacement Parcel 147 Parking Spaces. County hereby reserves a public easement on, over and across the Parking Structure and other portions of the Premises required for access to and from the Parking Structure (including without limitation driveways, ramps, aisles, entrances, exits, sidewalks, stairs, elevators and other Improvements) for vehicular and pedestrian access to and use of the Replacement Parcel 147 Parking Spaces for public parking purposes. The location of Replacement Parcel 147 Parking Spaces and the access ways and circulation plan for public use of the Replacement Parcel 147 Parking Spaces shall be approved by Director in connection with the approval by Director of the Approved Final Plans, Specifications and Costs. The Replacement Parcel 147 Parking Spaces shall be open to the public seven (7) days per week in accordance with such rules and regulations (including hours of public access) as are promulgated from time to time by County regulating such public use. Lessee shall make no use of the Premises, including without limitation the other parking located thereon, that interferes with the public easement described in this subsection 15.20.3 or is prohibited under or in conflict with the rules and regulations established by County for the use of the Replacement Parcel 147 Parking Spaces. County shall not be obligated to pay Lessee any compensation for the Replacement Parcel 147 Parking Spaces. Lessee shall have the right to charge the users of the Replacement Parcel 147 Parking Spaces for the use thereof in accordance with rates approved by County (with California Coastal Commission approval as required under Applicable Law) consistent with the public parking rates established (as modified from time to time) for other similar public parking in Marina del Rey. At Director's election, County and Lessee shall execute in recordable form a separate parking easement agreement that documents the terms and conditions of the public parking rights set forth in this subsection 15.20.3.

15.20.4 Parking Structure Operation Plan. Not later than ninety (90) days prior to the opening of the Parking Structure, Lessee shall submit to Director for Director's approval, a plan for the operation of the Parking Structure (the "Operation Plan"), including without limitation, hours of operation, access procedures, security, parking charges (if any) and other specifications pertaining to the operation of the Parking Structure. Lessee shall be obligated to operate, maintain and repair the Parking Structure at its sole cost and expense, in accordance with a standard of operation, repair and maintenance at least commensurate the standard of operation of other comparable first-class parking facilities in Marina del Rey. Lessee shall operate the Parking Structure in

accordance with the Operation Plan, as approved by Director, and shall make no modifications to such Operation Plan without the prior written approval of Director.

15.21 Dockmasters. Throughout the Term, Lessee shall maintain a dockmaster program acceptable to County to manage Lessee's anchorage at the Premises. Such dockmaster system may be jointly operated with the anchorage for Parcels 18 and 20.

15.22 Seaworthy Vessels. On or before January 1, April 1, July 1 and October 1 of each year during the Term, Lessee shall deliver to Director a report which contains the following information with respect to every vessel (including floating homes as defined in Title 19 of the Los Angeles County Code) moored within the Premises: (i) the name, address and telephone number of the registered owner (and slip tenant, if other than the registered owner) for each vessel; (ii) the state registration or federal document number, and name (if any), of the vessel; (iii) whether the vessel is a power vessel, sailing vessel or floating home; and (iv) the slip number and length of the vessel, and whether the vessel is presently authorized by Lessee for liveaboard tenancy. In addition, Lessee shall require, and shall certify annually to the Director, that as a condition of slip rental and continued slip tenancy, all new slip tenanted vessels from and after the Effective Date have been required to pass seaworthiness inspection by the Harbor Patrol within sixty (60) days of such slip rental. Henceforth, all of Lessee's slip leases shall provide that any newly tenanted vessel which is unable to pass such inspection within the required period, or such reasonable extension thereof as may be granted in the Director's sole discretion, shall be ineligible for continued slip tenancy on the leasehold premises and shall be removed therefrom. The requirements of the two preceding sentences shall not be applicable to any vessel which is specifically exempted from seaworthiness requirements by Title 19 of the Los Angeles County Code.

15.23 Controlled Prices. Lessee shall at all times maintain a complete list or schedule of the prices charged for all goods or services, or combinations thereof, supplied to the public on or from the Premises, whether the same are supplied by Lessee or by its Sublessees, assignees, concessionaires, permittees or licensees. Said prices shall be fair and reasonable, based upon the following two (2) considerations: first, that the property herein demised is intended to serve a public use and to provide needed facilities to the public at fair and reasonable cost; and second, that Lessee is entitled to a fair and reasonable return upon his investment pursuant to this Lease. In the event that Director notifies Lessee that any of said prices are not fair and reasonable, Lessee shall have the right to confer with Director and to justify said prices. If, after reasonable conference and consultation, Director shall determine that any of said prices are not fair and reasonable, the same shall be modified by Lessee or its Sublessees, assignees, concessionaires, permittees or licensees, as directed. Lessee may appeal the determination of Director to the Board, whose decision shall be final and conclusive. Pending such appeal, the prices fixed by Director shall be the maximum charged by Lessee.

15.24 No Merger. If, prior to the expiration of the Term, County or Lessee shall acquire the interest of the other in the Premises, or any portion thereof, there shall be no merger of the leasehold estate into (a) the fee simple estate in the Premises, (b) the sub-reversionary interest held by County or (c) any leasehold estate superior to that held by Lessee.



15.25 365 Election. County and Lessee agree, for the benefit of any Encumbrance Holder, that for so long as an Encumbrance shall encumber Lessee's interest in the Premises, the right of election arising under Section 365(h)(1) of the Bankruptcy Code may be exercised solely by Encumbrance Holder and not by Lessee. Any exercise or attempted exercise of such right of election by Lessee shall be void.

## 16. ARBITRATION.

Except as otherwise provided by this Article 16, disputed matters which may be arbitrated pursuant to this Lease shall be settled by binding arbitration in accordance with the then existing provisions of the California Arbitration Act, which as of the date hereof is contained in Title 9 of Part III of the California Code of Civil Procedure, commencing with Section 1280.

(a) Either party (the "Initiating Party") may initiate the arbitration process by sending written notice ("Request for Arbitration") to the other party (the "Responding Party") requesting initiation of the arbitration process and setting forth a brief description of the dispute or disputes to be resolved and the contention(s) of the Initiating Party. Within ten (10) days after service of the Request for Arbitration, the Responding Party shall file a "Response" setting forth the Responding Party's description of the dispute and the contention(s) of Responding Party. If Responding Party has any "Additional Disputes" he shall follow the format described for the Initiating Party. The Initiating Party will respond within ten (10) days after service of the Additional Disputes setting forth Initiating Party's description of the Additional Disputes and contentions regarding the Additional Disputes.

(b) Notwithstanding anything to the contrary which may now or hereafter be contained in the California Arbitration Act, the parties agree that the following provisions shall apply to any and all arbitration proceedings conducted pursuant to this Lease:

16.1 Selection of Arbitrator. The parties shall attempt to agree upon an arbitrator who shall decide the matter. If, for any reason, the parties are unable to agree upon the arbitrator within ten (10) days of the date the Initiating Party serves a request for arbitration on the Responding Party, then at any time on or after such date either party may petition for the appointment of the arbitrator as provided in California Code of Civil Procedure Section 1281.6.

16.2 Arbitrator. The arbitrator shall be a retired judge of the California Superior Court, Court of Appeal or Supreme Court, or any United States District Court or Court of Appeals located within the State, who has agreed to resolve civil disputes.

16.3 Scope of Arbitration. County and Lessee affirm that the mutual objective of such arbitration is to resolve the dispute as expeditiously as possible. The arbitration process shall not apply or be used to determine issues other than (i) those presented to the arbitrator by the Initiating Party provided those disputes are arbitrable disputes pursuant to this Lease, (ii) Additional Disputes presented to the arbitrator by the Responding Party, provided that any such Additional Disputes constitute arbitrable disputes pursuant to this Lease and (iii) such related preliminary or procedural issues as are necessary to resolve (i) and/or (ii) above. The arbitrator shall render an award. Either party may, at its sole cost and expense, request a statement of

decision explaining the arbitrator's reasoning which shall be in such detail as the arbitrator may determine. Unless otherwise expressly agreed by the parties in writing, the award shall be made by the arbitrator no later than the sooner of six (6) months after the date on which the arbitrator is selected by mutual agreement or court order, whichever is applicable, or five (5) months after the date of a denial of a petition to disqualify a potential arbitrator for cause. County and Lessee hereby instruct the arbitrator to take any and all actions deemed reasonably necessary, appropriate or prudent to ensure the issuance of an award within such period. Notwithstanding the foregoing, failure to complete the arbitration process within such period shall not render such arbitration or any determination made therein void or voidable; however, at any time after the expiration of the foregoing five (5) or six (6) month periods, as applicable, either party may deliver written notice to the arbitrator and the other party either terminating the arbitration or declaring such party's intent to terminate the arbitration if the award is not issued within a specified number of days after delivery of such notice. If the arbitrator's award is not issued prior to the expiration of said specified period, the arbitration shall be terminated and the parties shall recommence arbitration proceedings pursuant to this Article 16.

16.4 Immunity. The parties hereto agree that the arbitrator shall have the immunity of a judicial officer from civil liability when acting in the capacity of arbitrator pursuant to this Lease.

16.5 Section 1282.2. The provisions of Code of Civil Procedure § 1282.2 shall apply to the arbitration proceedings except to the extent they are inconsistent with the following:

(a) Unless the parties otherwise agree, the arbitrator shall appoint a time and place for the hearing and shall cause notice thereof to be served as provided in said § 1282.2 not less than ninety (90) days before the hearing, regardless of the aggregate amount in controversy.

(b) No later than sixty (60) days prior to the date set for the hearing (unless, upon a showing of good cause by either party, the arbitrator establishes a different period), in lieu of the exchange and inspection authorized by Code of Civil Procedure § 1282.2(a)(2)(A), (B) and (C), the parties shall simultaneously exchange the following documents by personal delivery to each other and to the arbitrator:

(1) a written Statement of Position, as further defined below, setting forth in detail that party's final position regarding the matter in dispute and specific numerical proposal for resolution of monetary disputes;

(2) a list of witnesses each party intends to call at the hearing, designating which witnesses will be called as expert witnesses and a summary of each witness's testimony;

(3) a list of the documents each intends to introduce at the hearing, together with complete and correct copies of all of such documents; and,

(4) if the issue involves Fair Market Rental Value or a valuation matter, a list of all Written Appraisal Evidence (as defined below) each intends to introduce at the hearing, together with complete and correct copies of all of such Written Appraisal Evidence.

(c) No later than twenty (20) days prior to the date set for the hearing, each party may file a reply to the other party's Statement of Position ("Reply"). The Reply shall contain the following information:

(1) a written statement, to be limited to that party's rebuttal to the matters set forth in the other party's Statement of Position;

(2) a list of witnesses each party intends to call at the hearing to rebut the evidence to be presented by the other party, designating which witnesses will be called as expert witnesses;

(3) a list of the documents each intends to introduce at the hearing to rebut the evidence to be presented by the other party, together with complete and correct copies of all of such documents (unless, upon a showing of good cause by either party, the arbitrator establishes a different deadline for delivering true and correct copies of such documents);

(4) if the issue involves Fair Market Rental Value or a valuation matter, a list of all Written Appraisal Evidence, or written critiques of the other party's Written Appraisal Evidence if any, each intends to introduce at the hearing to rebut the evidence presented by the other party, together with complete and correct copies of all of such Written Appraisal Evidence (unless, upon a showing of good cause by either party, the arbitrator establishes a different deadline for delivering true and correct copies of such Written Appraisal Evidence); and

(5) Witnesses or documents to be used solely for impeachment of a witness need not be identified or produced.

(d) The arbitrator is not bound by the rules of evidence, but may not consider any evidence not presented at the hearing. The arbitrator may exclude evidence for any reason a court may exclude evidence or as provided in this Lease.

**16.6 Statements of Position.** The Statement of Position to be delivered by Section 16.5 shall comply with the following requirements:

(a) Where the dispute involves rent to be charged, market values, insurance levels or other monetary amounts, the Statements of Position shall numerically set forth the existing minimum rent, percentage rent, market value, insurance level and/or other monetary amounts in dispute, the party's proposed new minimum rent, percentage rent, market value, insurance level and/or other monetary amounts, and shall additionally set forth the facts supporting such party's position.

(b) If the dispute relates to Improvement Costs, the Statements of Position shall set forth the facts supporting such party's position and the amount of each cost which the party believes should be allowed or disallowed.

**16.7 Written Appraisal Evidence.** Neither party may, at any time during the proceedings, introduce any written report which expresses an opinion regarding Fair Market

Rental Value or the fair market value of the Premises, or any portion thereof, ("Written Appraisal Evidence") unless such Written Appraisal Evidence substantially complies with the following standards: it shall describe the Premises; identify the uses permitted thereon; describe or take into consideration the terms, conditions and restrictions of this Lease; correlate the appraisal method(s) applied; discuss the relevant factors and data considered; review rentals paid by lessees in Marina del Rey and other marina locations within Southern California who are authorized to conduct similar activities on comparable leaseholds; and, describe the technique of analysis, limiting conditions and computations that were used in the formulation of the valuation opinion expressed. With respect to disputes regarding Fair Market Rental Value, such Written Appraisal Evidence shall express an opinion regarding the fair market rental value of the Premises as prescribed by Section 4.4.1. Written Appraisal Evidence in connection with disputes arising out of Article 6 of this Lease shall predicate any valuation conclusions contained therein on the Income Approach. Written Appraisal Evidence shall in all other respects be in material conformity and subject to the requirements of the Code of Professional Ethics and the Standards of Professional Practice of The Appraisal Institute or any successor entity, etc.

16.8 Evidence. The provisions of Code of Civil Procedure § 1282.2(a)(2)(E) shall not apply to the arbitration proceeding. The arbitrator shall have no discretion to allow a party to introduce witnesses, documents or Written Appraisal Evidence (other than impeachment testimony) unless such information was previously delivered to the other party in accordance with Section 16.5 and, in the case of Written Appraisal Evidence, substantially complies with the requirements of Section 16.7, or such evidence consists of a transcript of a deposition of an expert witness conducted pursuant to Section 16.9. Notwithstanding the foregoing, the arbitrator may allow a party to introduce evidence which, in the exercise of reasonable diligence, could not have been delivered to the other party in accordance with Section 16.5, provided such evidence is otherwise permissible hereunder.

16.9 Discovery. The provisions of Code of Civil Procedure § 1283.05 shall not apply to the arbitration proceedings except to the extent incorporated by other sections of the California Arbitration Act which apply to the arbitration proceedings. There shall be no pre-arbitration discovery except as provided in Section 16.5; provided, however, each party shall have the right, no later than seven (7) days prior to the date first set for the hearing, to conduct a deposition, not to exceed three (3) hours in duration unless the arbitrator otherwise determines that good cause exists to justify a longer period, of any person identified by the other party as an expert witness pursuant to Sections 16.5 (2)(b) or 16.5 (3)(b).

#### 16.10 Awards of Arbitrators.

16.10.1. Monetary Issues. With respect to monetary disputes (including without limitation disputes regarding Percentage Rent, Fair Market Rental Value and the amount of coverage under the policies of insurance required pursuant to Article 9 of this Lease), the arbitrator shall have no right to propose a middle ground or any proposed modification of either Statement of Position. The arbitrator shall instead select whichever of the two Statements of Position is the closest to the monetary or numerical amount that the arbitrator determines to be the appropriate determination of the rent, expense, claim, cost, delay, coverage or other matter in dispute and shall render an award consistent with such Statement of Position. For purposes of this Section 16.10, each

dispute regarding Annual Minimum Rent, each category of Percentage Rent and the amount of required insurance coverage shall be considered separate disputes (a "Separate Dispute"). While the arbitrator shall have no right to propose a middle ground or any proposed modification of either Statement of Position concerning a Separate Dispute, the arbitrator shall have the right, if the arbitrator so chooses, to choose one party's Statement of Position on one or more of the Separate Disputes, while selecting the other party's Statement of Position on the remaining Separate Disputes. For example, if the parties are unable to agree on the Annual Minimum Rent and three Percentage Rent categories to be renegotiated pursuant to Section 4.4 and the amount of liability insurance coverage to be renegotiated pursuant to Section 9.3, then there shall be five Separate Disputes and the arbitrator shall be permitted to select the County's Statement of Position with respect to none, some or all of such five Separate Disputes and select the Lessee's Statement of Position, on the balance, if any, of such five Separate Disputes. Upon the arbitrator's selection of a Statement of Position, pursuant to this Article 16, the Statement of Position so chosen and the award rendered by the arbitrator thereon shall be final and binding upon the parties, absent Gross Error on the part of the arbitrator.

16.10.2. Nonmonetary Issues. With respect to nonmonetary issues and disputes, the arbitrator shall determine the most appropriate resolution of the issue or dispute, taking into account the Statements of Position submitted by the parties, and shall render an award accordingly. Such award shall be final and binding upon the parties, absent Gross Error on the part of the arbitrator.

16.11 Powers of Arbitrator. In rendering the award, the arbitrator shall have the power to consult or examine experts or authorities not disclosed by a party pursuant to Section 16.5(2) hereof, provided that each party is afforded the right to cross-examine such expert or rebut such authority.

16.12 Costs of Arbitration. Lessee and County shall equally share the expenses and fees of the arbitrator, together with other expenses of arbitration incurred or approved by the arbitrator. Failure of either party to pay its share of expenses and fees constitutes a material breach of such party's obligations hereunder.

16.13 Amendment to Implement Judgment. Within seven (7) days after the issuance of any award by the arbitrator becomes final, the County will draft a proposed amendment to the Lease setting forth the relevant terms of such award. Within seven (7) days after delivery of a copy of the amendment to Lessee, Lessee will sign the amendment and return the executed copy to the County, which shall thereafter be approved by the Board of Supervisors and executed by County as soon as reasonably practicable.

16.14 Impact of Gross Error Allegations. Where either party has charged the arbitrator with Gross Error:

16.14.1. The award shall not be implemented if the party alleging Gross Error obtains a judgment of a court of competent jurisdiction stating that the arbitrator was guilty of Gross Error and vacating the arbitration award ("Disqualification Judgment"). In the event of a Disqualification Judgment, the arbitration process shall

begin over immediately in accordance with this Section 16.14, which arbitration shall be conducted (with a different arbitrator) as expeditiously as reasonably possible.

16.14.2. The party alleging Gross Error shall have the burden of proof.

16.14.3. For the purposes of this Section 16.14, the term "Gross Error" shall mean that the arbitration award is subject to vacation pursuant to California Code of Civil Procedure § 1286.2 or any successor provision.

16.15 Notice.

NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE ARBITRATION OF DISPUTES PROVISION TO NEUTRAL ARBITRATION.

\_\_\_\_\_  
Initials of Lessee

\_\_\_\_\_  
Initials of County

17. DEFINITION OF TERMS; INTERPRETATION.

17.1 Meanings of Words Not Specifically Defined. Words and phrases contained herein shall be construed according to the context and the approved usage of the English language, but technical words and phrases, and such others as have acquired a peculiar and appropriate meaning by law, or are defined in Section 1.1, are to be construed according to such technical, peculiar, and appropriate meaning or definition.

17.2 Tense; Gender; Number; Person. Words used in this Lease in the present tense include the future as well as the present; words used in the masculine gender include the feminine and neuter and the neuter includes the masculine and feminine; the singular number includes the plural and the plural the singular; the word "person" includes a corporation, partnership, limited liability company or similar entity, as well as a natural person.

17.3 Business Days. For the purposes of this Lease, "business day" shall mean a business day as set forth in Section 9 of the California Civil Code.

17.4 Parties Represented by Consultants, Counsel. Both County and Lessee have entered this Lease following advice from independent financial consultants and legal counsel of their own choosing. This document is the result of combined efforts of both parties and their consultants and attorneys. Thus, any rule of law or construction which provides that ambiguity in a term or provision shall be construed against the draftsman shall not apply to this Lease.

17.5 Governing Law. This Lease shall be governed by and interpreted in accordance with the laws of the State of California.

17.6 Reasonableness Standard. Except where a different standard is specifically provided otherwise herein, whenever the consent of County or Lessee is required under this Lease, such consent shall not be unreasonably withheld and whenever this Lease grants County or Lessee the right to take action, exercise discretion, establish rules and regulations or make allocations or other determinations, County and Lessee shall act reasonably and in good faith. These provisions shall only apply to County acting in its proprietary capacity.

17.7 Compliance with Code. County and Lessee agree and acknowledge that this Lease satisfies the requirements of Sections 25536 and 25907 of the California Government Code as a result of various provisions contained herein.

17.8 Memorandum of Lease. The parties hereto shall execute and acknowledge a Memorandum of Lease Extension, in recordable form and otherwise satisfactory to the parties hereto, for recording as soon as is practicable on or following the Execution Date.

17.9 Water Quality Management Program. During the remaining Term of the Lease, Lessee shall comply with all water quality management requirements imposed by the Coastal Commission in connection with the issuance of the Coastal Development Permit for the Anchorage Improvements; provided, however, that Lessee shall in all events comply at least with the water quality management requirements set forth in Exhibit D attached to this Lease. In addition, during the remaining Term of the Lease, Lessee shall remove floating debris from the water surrounding the Anchorage Improvements in accordance with a program and regular schedule reasonably acceptable to the Director.

IN WITNESS WHEREOF, County has, by order of its Board of Supervisors, caused this Lease to be subscribed by the Chairman of said Board and attested by the Clerk thereof, and Lessee has executed the same the day and year first hereinabove written.

THE COUNTY OF LOS ANGELES

By: \_\_\_\_\_  
Chair, Board of Supervisors

HOLIDAY-PANAY WAY MARINA, L.P.,  
a California limited partnership

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

ATTEST:

SACHI HAMAI,  
Executive Officer of the Board of  
Supervisors

By: \_\_\_\_\_  
Deputy

APPROVED AS TO FORM:

RAYMOND G. FORTNER, JR.,  
OFFICE OF COUNTY COUNSEL

By: \_\_\_\_\_  
Deputy

APPROVED AS TO FORM:

MUNGER, TOLLES & OLSON LLP

By: \_\_\_\_\_



## **EXHIBIT A**

### **LEGAL DESCRIPTION OF PREMISES**

Parcels 263 to 286 inclusive, in the County of Los Angeles, State of California, as shown on Los Angeles County Assessor's Map No. 88, recorded in Book 1, pages 53 to 70 inclusive, of Assessor's Maps, in the office of the Recorder of said county. [Also to include legal description of current water slip encroachment area.]

Reserving and excepting therefrom unto the County of Los Angeles easements for sanitary sewer, fire access and harbor utility purposes over those portions thereof designated on said map to be reserved by said county for such purposes.

Also reserving and excepting therefrom unto the County of Los Angeles an easement for drainage purposes in and across that portion of above described parcel of land which lies within the southerly 4 feet of the westerly 12 feet of the easterly 22 feet of said Parcel 285.

Also subject to the easements reserved by the County of Los Angeles in Sections 15.19 and 15.20 of this Lease.

APN: 8940-759-833  
8940-370-022  
8940-370-023

**EXHIBIT A-1**

**PARTIAL TERMINATION PREMISES**

**EXHIBIT B**  
**REDEVELOPMENT PLAN**

## EXHIBIT C

### ASSIGNMENT STANDARDS

These standards are to apply to Proposed Transfers of Lessee's interest in this Lease and/or the Premises and to any Major Sublease. These standards and conditions are not to apply to (a) an assignment for the purpose of securing leasehold financing of the parcel by an encumbrance holder approved by County, (b) the transfer of the leasehold in connection with a foreclosure or transfer in lieu of foreclosure by an approved lender, or (c) the first transfer by that encumbrance holder if it has acquired the leasehold through a foreclosure or a transfer in lieu of foreclosure.

1. The proposed transferee must have a net worth determined to be sufficient in relation to the financial obligations of the lessee pursuant to the specific lease involved (e.g. equal to at least six (6) times the total Annual Minimum Rent and Percentage Rent due to County for the most recent fiscal). A letter of credit, cash deposit, guarantee from a parent entity or participating individual(s) having sufficient net worth or similar security satisfactory to the County may be substituted for the net worth requirement. If the proposed transferee's net worth is materially less than the transferor's, County may disapprove the assignment or require additional security such as that described in the previous sentence.
2. The proposed assignee must have significant experience in the construction (if contemplated), operation and management of the type(s) of Improvements existing on or to be constructed on the Premises, or provide evidence of contractual arrangements for these services with providers of such services satisfactory to the County. Changes in the providers of such services and changes to the contractual arrangements must be approved by the County. All approvals of the County will not be unreasonably withheld or delayed.
3. The individual or individuals who will acquire Lessee's interest in this Lease or the Premises, or own entity which will so acquire Lessee's interest, irrespective of the tier at which individual ownership is held, must be of good character and reputation and, in any event, shall have neither a history of, nor a reputation for: (1) discriminatory employment practices which violate any federal, state or local law; or (2) non-compliance with environmental laws, or any other legal requirements or formally adopted ordinances or policies of the County.
4. The price to be paid for the Proposed Transfer shall not result in a financing obligation of the proposed transferee which jeopardizes its ability to meet rental obligations to the County. Market debt service coverage ratios and leasehold financial performance, at the time of the Proposed Transfer, will be used by County in making this analysis.
5. If the proposed transferee is an entity, rather than an individual, the structure of the proposed transferee must be such that (or the assignee must agree that) the County will have reasonable approval rights regarding any future direct or indirect transfers of interests in the entity or the applicable lease; provided

however, that a transfer of ownership of a publicly held parent corporation of Lessee that is not done primarily as a transfer of this leasehold will not be subject to County approval.

6. The terms of the proposed assignment will not detrimentally affect the efficient operation or management of the leasehold, the Premises or any Improvements thereon.
7. The proposed transferee does not have interests which, when aggregated with all other interests granted by County to such transferee, would violate any policy formally adopted by County restricting the economic concentration of interests granted in the Marina del Rey area, which is uniformly applicable to all Marina del Rey lessees.
8. The transfer otherwise complies with the terms of all ordinances, policies and/or other statements of objectives which are formally adopted by County and/or the County Department of Beaches and Harbors and which are uniformly applicable to persons or entities with rights of occupancy in any portion of Marina del Rey.

## EXHIBIT D

### **PUBLIC SERVICE PLAN ACTIVITIES**

#### FUNDRAISING

PMYC sponsors and conducts fundraising events for the Boys and Girls Club of Venice; Arbol de Navidad del Nino Pobre, which benefits poor children in La Paz; the Annual Charity Poker Run which benefits developmentally handicapped children. We also host joint community activities for the Interact Club of Culver City High School, Brownie Troop # 1007, Culver City Rotary Club, and other organizations and events approved by the Board of Directors.

#### EDUCATION

PMYC holds an annual CPR class that is open to the public. Other boating safety and navigation classes made available by the US Power Squadron, Coast Guard Auxiliary, and the LA Fire Department are presented periodically as requested. Our facility is provided at no cost.

#### MARINE ECOLOGY

PMYC members volunteer time and vessels, if required, to promote local marine ecology programs currently being conducted. It was a member of PMYC that started the annual clean-up day, which has been an annual event for over 15 years.

#### YOUTH PROGRAMS

PMYC sponsors an annual fishing derby in which children are taught to fish, and are guided by experienced fishermen. Children participating receive a fishing pole and tackle box to keep, as well as awards for various challenges. This event is open to members and non-members. PMYC has also volunteered members and their vessels to the Culver City High School Interact Club and to Brownie Troop #1007 to give children an educational view of Marina Del Rey by sea. We encourage children to become active in the sport of yachting.

#### ASSOCIATIONS

PMYC is a member of the U.S. Sailing Association, the Association of Santa Monica Bay Yacht Clubs, the Southern California Yachting Association, and the Southern California Yacht Racing Union and is listed on the Registry of the Yacht Clubs of America.

#### HISTORY

PMYC was established in 1963 as a non-profit club to serve the boating community of Marina Del Rey. PMYC prides itself in being open to people from all walks of life, to affordably belong to a yacht club and enjoy and participate in boating, yachting and racing activities.

7/29/2004

13915 Panay Way, Marina Del Rey, Ca. (310)823-9717



*To enrich lives through effective and caring service*

March 6, 2008



**Stan Wisniewski**  
Director

**Kerry Silverstrom**  
Chief Deputy

TO: Small Craft Harbor Commission

FROM: Stan Wisniewski, Director *Stan Wisniewski*

SUBJECT: **AGENDA ITEM 5 – REGIONAL PLANNING REPORT ON  
COASTAL COMMISSION'S LCP PERIODIC REVIEW**

At your last meeting, your Commission requested a representative from the Department of Regional Planning be present at the next Small Craft Harbor Commission (SCHC) meeting to report on the process and timing for obtaining public input in connection with the Marina del Rey Local Coastal Program (LCP) Periodic Review. Accordingly, Mr. Ron Hoffman, Administrator, and Ms. Gina Natoli, Supervising Regional Planner, with the Department of Regional Planning will be available at your next meeting to discuss the process and clarify the timing for obtaining public input on the Marina del Rey LCP Periodic review.

SW:shk



*To enrich lives through effective and caring service*



**Stan Wisniewski**  
Director

**Kerry Silverstrom**  
Chief Deputy

March 6, 2008

TO: Small Craft Harbor Commission  
FROM: Stan Wisniewski, Director *Stan Wisniewski*  
SUBJECT: **ITEM 6 - ONGOING ACTIVITIES REPORT**

**BOARD ACTIONS ON ITEMS RELATING TO MARINA DEL REY**

At its meeting held on February 19, 2008, the Board of Supervisors unanimously approved the appointment of Mr. Albert DeBlanc, Jr., Esq., as a member of the Small Craft Harbor Commission. For your information, we have attached Mr. DeBlanc's qualifications and background information.

**REGIONAL PLANNING COMMISSION'S CALENDAR**

There are no Marina del Rey matters scheduled for consideration by the Regional Planning Commission.

**CHANGE IN SMALL CRAFT HARBOR COMMISSION CALENDAR**

The Small Craft Harbor Commission (SCHC) meeting dates are usually scheduled on the second Wednesday of each month. However, pursuant to your Board's request, the April 9, 2008 meeting has been changed to April 16, 2008, and the July 9, 2008 meeting has been changed to July 16, 2008. The meetings will continue to be held at 9:30 a.m. in the Burton Chace Park Community Room. A revised meeting schedule for the remainder of the calendar year with the meeting changes is attached and will be posted on the Department of Beaches and Harbors website.

**MINIMUM REQUIREMENTS FOR LIVEBOARD STATUS**

At the last SCHC meeting, your Commission directed staff to report on the process and eligibility requirements for boaters to attain liveboard status. Accordingly, the following has been prepared to describe the general process to be followed by a liveboard candidate.



Initially, the liveaboard candidate will obtain a 'Liveaboard Permit Application' and 'Vessel Equipment Requirements' from the dockmaster. After completing the 'Liveaboard Permit Application', which must be signed by the dockmaster, the liveaboard candidate will schedule a vessel inspection with the Sheriff's Department. Some of the items to be inspected by the Sheriff's Department include seaworthiness of the vessel, ventilation, personal flotation devices, bell or whistle, visual distress signals, fire extinguisher, registration, and marine sanitation device.

Upon successfully passing the vessel inspection, a Liveaboard Permit will be issued to the liveaboard candidate. The Liveaboard Permit is valid for one year and must be renewed on each successive anniversary. Liveaboard Permits are issued free of charge from the Harbor Master's office.

Each lessee has its own criteria for evaluating the financial requirements of a liveaboard candidate and establishes its own rates for liveaboard privileges. However, under Exhibit III of the Policy Statement No. 27 guidelines, the liveaboard surcharge can be up to 55% of the basic slip rent. Our experience indicates that lessees have complied with this policy, and we have not received any complaints that a boater is being charged more than 55% for the liveaboard privilege.

#### **BROWN ACT AND SMALL CRAFT HARBOR COMMISSION RULES**

Thomas Faughnan, Esq. from the Office of the County Counsel will be available to clarify the provisions of the Brown Act and to discuss the Small Craft Harbor Commission Rules, including the procedural changes made by the Chair last month for ceding time and accepting public testimony.

#### **NEW SUBLEASE AT PARCEL 33R -- PANIFICIO RESTAURANT**

In February, the Department approved a sublease between the Parcel 33 lessee, The Waterfront-MDR, LLC, and the sublessee, The Organic Panificio, LLC, to remodel the former Harbor House and Edie's Diner restaurants into a full-service Italian restaurant. The Organic Panificio will feature a bar, wine lounge, and two dining rooms serving organic meats, pastas, pizza, salads, sandwiches, and coffee. The establishment will also have banquet facilities.

The main facility, where the former Harbor House was located, will offer fine dining with operating hours between 11:00 am and 2:00 am. The area where Edie's Diner was located will offer casual dining, including a small deli area to sell pre-packaged food, from 6:00 am to 4:00 pm. Panificio is anticipating a grand opening in April or the early spring. Remodeling work is progressing well.

The principals of The Organic Panificio are Charles Colby and John Tennant.

Small Craft Harbor Commission  
March 6, 2008  
Item 6, Page 2

**DESIGN CONTROL BOARD MINUTES**

The minutes from the Design Control Board meeting for December 2007 are attached for your review.

SW:rf  
Attachments



SACHI A. HAMAI  
EXECUTIVE OFFICER

## COUNTY OF LOS ANGELES BOARD OF SUPERVISORS

KENNETH HAHN HALL OF ADMINISTRATION  
500 WEST TEMPLE STREET, ROOM 383  
LOS ANGELES, CALIFORNIA 90012  
(213) 974-1411 • FAX (213) 620-0636

### MEMBERS OF THE BOARD

GLORIA MOLINA

YVONNE B. BURKE

ZEV VAROSLAVSKY

DON KNABE

MICHAEL D. ANTONOVICH

February 19, 2008

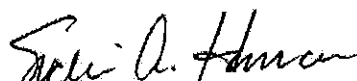
Albert DeBlanc, Jr., Esq.  
6033 Century Blvd., #790  
Los Angeles, California 90045

Dear Mr. DeBlanc, Jr.:

At its meeting held today, on recommendation of Supervisor Yvonne B. Burke, the Los Angeles County Board of Supervisors appointed you a member of the Small Craft Harbor Commission, for an unexpired term of office expiring September 29, 2010.

Enclosed you will find an information sheet on the Small Craft Harbor Commission. The contact person for the Commission will notify you soon regarding the meetings.

Very truly yours,

  
SACHI A. HAMAI  
EXECUTIVE OFFICER

SAH:apt.685

Enclosure

c: Mr. Stanley Wisniewski, Contact  
Small Craft Harbor Commission

Albert DeBlanc, Jr., Esq.

Nominee For: Small Craft Harbor Commission  
Nominated By: Supervisor Burke

STATEMENT OF QUALIFICATIONS

Please Type or Print

Name ALBERT DEBLANC, JR., ESQ Female ☒ Male

City where you reside \_\_\_\_\_

Education SEE ATTACHED RESUME

Occupation ATTORNEY Employer SEE: RESUME

Former Business/Professional Experience \_\_\_\_\_

Organizational Affiliations (professional, business, homeowner, etc.)

SEE ATTACHED RESUME

Are you generally available for daytime or nighttime  
Commission meetings? Yes ☒ No

If no, please explain \_\_\_\_\_

Statement of Qualifications  
Page 2

Are you registered to vote in Los Angeles County?

Yes X No       

Have you ever been convicted, fined, imprisoned, placed on probation, received a suspended sentence or forfeited bail for any offense (except non-moving traffic violations) by any court (including convictions dismissed under Penal Code Section 1203.4)?

Yes        No X

If yes, what offense or offenses:

\_\_\_\_\_  
\_\_\_\_\_

At the present time, do you hold any position with any public entity?

Yes X No       

If yes, what public entity or entities and what position or positions?

HUMAN RELATIONS COMMISSION COUNTY  
HEARING OFFICER FOR LAPD

A statement of duties and/or qualifications of the position for which you are being considered is attached. Please read the statement and write below why you are particularly suited to serve the people of the County of Los Angeles in this position. You may attach additional sheets of paper for your response (optional).

NUMEROUS TRAINING CERTIFICATES  
FROM THE U.S. COAST GUARD.  
TRAINED AS A YACHTSMAN SINCE 1971.  
OWNER OF A 38.5 BENETEAU SAILBOAT  
FOR 13 YEARS. RESIDE 8 MINUTES FROM  
THE MARINA. OFFICE 10 MINUTES FROM  
THE MARINA.

Statement of Qualifications  
Page 3

Please indicate the names, addresses, and phone numbers of references (optional):

SEE ATTACHED RESUME

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CONSENT AND CERTIFICATION

I have reviewed the attached description of qualifications and duties for the position. I am able to perform all duties. I am willing to serve.

I acknowledge that the County of Los Angeles may contact other entities or other persons to confirm information I have provided. I consent to these contacts.

I certify that all statements and representations made in this Statement of Qualifications are true and correct.

Dated: FEBRUARY 5, 2008

Albert De Blance  
(Signature)

Albert DeBlanc, Jr., Esq.

Nominee For: Small Craft Harbor Commission  
Nominated By: Supervisor Burke

**ACKNOWLEDGEMENT OF CONFLICT OF INTEREST  
INFORMATION**

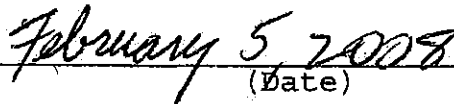
I acknowledge that I have been advised that Los Angeles County has made advance disclosure of potential Conflicts of Interest applicable to all members of commissions, committees and boards.

This means among other things, that I will disqualify myself from participation in any governmental matters in which I have an economic interest. If I have any questions regarding the propriety of my participation in such governmental matters, I will consult with the County Counsel.

I have also received a copy of applicable definitions and explanation of the requirements.



(Signature)



(Date)

*Law Offices*  
**DEBLANC, DEBLANC AND ASSOCIATES**

ALBERT DEBLANC, JR.  
LEONA CORINE DEBLANC

## **RESUME**

**Albert DeBlanc, Jr.** is a partner in the firm of DeBlanc, DeBlanc and Associates. Mr. DeBlanc has maintained an active civil and criminal litigation practice for the past 33 years. He has handled numerous cases with high media interest and coverage. In addition, Mr. DeBlanc has tried successfully to juries, high exposure civil cases involving wrongful death by government employees, personal injury with catastrophic injuries, wrongful termination, and entertainment breach of contract cases. He has tried over 250 criminal jury trials.

More recently, he acted as a legal analyst and consultant on numerous high publicity case for television and radio for both local and national media entities. During the O.J. Simpson Criminal and Civil trials he was the principal Legal Analyst for KTLA - Channel 5, with broadcast across the nation and many foreign countries

## **PERSONAL**

**Date of Birth**  
**Place of Birth**

December 7, 1943  
Los Angeles, California

**Wife**

Leona Corine De Blanc  
**Attorney at Law**  
**Law Offices of**  
**De BLANC, De BLANC and**  
**ASSOCIATES**

February 2008



*Law Offices*  
DEBLANC, DEBLANC AND ASSOCIATES

<b>Married</b>	1966, Los Angeles, California
<b>Children</b>	Albert Jesse De Blanc, III <b>Born - April 5, 1969</b> <b>UCLA Graduate</b>

**EMPLOYMENT**

<b>Attorney at Law</b>	State Bar No. 59279 <b>1974 - present</b> <b>Civil and Criminal Litigation Practice</b>
<b>Supreme Court United States of America</b>	1989 (Admitted to Practice)
<b>U.S. Court of Appeal (Ninth Circuit)</b>	1976 (Admitted to Practice)
<b>California State Bar</b>	1974 (Admitted to Practice)
<b>California Appellate Project Panel Attorney</b>	1992
<b>Law Offices of the Los Angeles County Public Defender</b>	1977 - 1980
<b>Los Angeles Police DEPARTMENT</b>	1968 - 1974
Police Sergeant	1971 - 1974
Investigator II	1970 - 1971
Police Officer	1968 - 1971

**PROFESSIONAL POSITIONS and ACTIVITIES**

<b>CALIFORNIA STATE UNIVERSITY AT L.A., MEMBER OF THE ADVISORY BOARD, FORENSICS DEPARTMENT</b>	<b>2002 - Present</b>
<b>LOS ANGELES POLICE COMMISSION, BLUE RIBBON PANEL, FOR THE SELECTION OF CHIEF OF POLICE</b>	<b>July 2002 -Sept 2002</b>

February 2008

## DEBLANC, DEBLANC AND ASSOCIATES

## 2002 - Present

### 1994 -Present

## 1999 - Present

**PERIODIC**

**1994 - 1996**

### 1992 - Present

**1985 - 2007**

## 1990 - 1998

## 1980 - 1982

## 1978 - 1980

## 1980 - 1982

**1976 - 1980**

## 1977 - 1979

## 1975 - 1979

**1979 - 1980**

1979

*Law Offices*  
DEBLANC, DEBLANC AND ASSOCIATES

**Member Old Bailey Society** 1996 - Present

**JOHN M. LANGSTON BAR ASSOCIATION**

**President** 1979 - 1981

**Member, Board of Directors** 1975 - 1985

**PROJECT HEAVY** (Criminal Justice Diversion Program, for Youth)

**Chairman Board of Directors** 1979 - 1981

**Member, Board of Directors** 1976 - 1985

**OSCAR JOEL BRYANT ASSOCIATION** (Los Angeles Police Department)

**President** 1970 - 1972

**Member** 1968 - 1974

**AWARDS**

**CRIMINAL TRIAL LAWYER OF THE YEAR AWARD** 1990  
**John M. Langston Bar Association**

**CERTIFICATE OF COMMENDATION** June 1980  
**Mayor Tom Bradley**

**CERTIFICATE OF COMMENDATION** June 1982  
**Minority Bar Association**

**CALIFORNIA STATE SENATE**  
**Rules Committee Resolution** April 1990  
**SPICE AWARD**  
**(SPECIAL PEOPLE INTO COMMUNITY ENDEAVORS)**

**OUTSTANDING SERVICE AWARD** July 1980  
**John M. Langston Bar Association**  
**WEST COAST REGION, NAACP COMMENDATION**  
**as instructor on: "AFFIRMATIVE LEGAL STRATEGIES"**  
**CITY OF LOS ANGELES RESOLUTION**  
**City Council**

*Other Commendations available upon request.*

*Law Offices*

DEBLANC, DEBLANC AND ASSOCIATES

**REFERENCES**

**YVONNE BRATHWAITE BURKE**

Second District - Supervisor,  
Los Angeles County Board of Supervisors  
**383 Kenneth Hahn Hall of Administration**  
**Los Angeles, CA 900012**  
**(213) 974-1411**

**THE HONORABLE TERRY J. HATTER**

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Central District  
312 North Spring Street, Room 17  
Los Angeles, CA 90012  
**(213) 894-5276**

**THE HONORABLE VAINO SPENCER**

PRESIDING JUSTICE, COURT OF APPEALS  
SECOND APPELLATE DISTRICT, DIVISION ONE  
300 S. Spring Street, Room 2228  
Los Angeles, CA 90012

**THE HONORABLE ROBERT L. ROBERSON, JR. (Retired)**

Judge, Superior Court Los Angeles County  
Presiding Judge, Appellate Department  
111 North Hill Street  
Los Angeles, CA 90012  
**(213) 974-5791**

*Other references available upon request*



*"To enrich lives through effective and caring service"*



**Stan Wisniewski**  
Director

**Kerry Silverstrom**  
Chief Deputy

March 6, 2008

TO: Small Craft Harbor Commission

FROM: Maureen Sterling

SUBJECT: **AGENDA ITEM 6 - REVISED SMALL CRAFT HARBOR COMMISSION MEETING SCHEDULE FOR YEAR 2008**

This is to confirm the Small Craft Harbor Commission meeting schedule for the 2008 calendar year. While the Commission regularly convenes on the second Wednesday of each month, the Commission requested that the April and July dates be changed to the third Wednesday of the month, as reflected in the bold dates below. The meetings will continue to be held at 9:30 a.m., in the Burton Chace Park Community Room.

January 23, 2008  
February 13, 2008  
March 12, 2008  
**April 16, 2008**  
May 14, 2008  
June 11, 2008  
**July 16, 2008**  
August 13, 2008  
September 10, 2008  
October 8, 2008  
November 12, 2008  
December 10, 2008

If you have any questions or require any additional information, please feel free to contact me at (310) 821-5420.

/ms

**DRAFT**

**MINUTES  
OF  
MARINA DEL REY  
DESIGN CONTROL BOARD  
\*SPECIAL MEETING\***

**December 13, 2007**

**Department of Beaches and Harbors  
Burton Chace County Park  
Community Building – 13650 Mindanao Way  
Marina del Rey, CA 90292**

**Members Present:** Peter Phinney, A.I.A., Fourth District  
David Abelar, Second District  
Tony Wong, P.E., Fifth District

**Members Absent:** Susan Cloke, Chair

**Department Staff Present:** Santos Kriemann, Deputy Director  
Charlotte Miyamoto, Chief, Planning Division  
Ismael Lopez, Planner  
Teresa Young, Secretary

**County Staff Present:** Tom Faughnan, Principal Deputy County Counsel  
Michael Tripp, Department of Regional Planning

**Guests Testifying:** Al Udwin, Archstone-Smith  
Jill Peterson, Pacific Ocean Mgmt.  
Jim Barnett, Encore Image  
Amin Atlaschi, Pinkberry  
Dan Gottlieb, Marina Strand Colony II Resident  
Pat Younis, The Bridge Group  
Roslyn Walker, Marina del Rey Resident  
Beverly Moore, MdR Convention Visitors Bureau  
Ron Wood, SMYC Marina  
Monika Moses, GMPA Architects  
Ronald Katela, Brookfield Properties  
Erin Eartman, e<sup>2</sup> Lighting Design  
Calvin Ahbe, Ahbe Landscape Architects  
Robin Perkins, Selbert Perkins Design  
Rick DeMarco, The Counter  
David Blair, MCG Architecture  
Shatha Odish, Caruso Affiliated  
Mr. Curran (didn't sign guest list)  
Joe Preciado, Bay Club  
Ms. Liggett (didn't sign guest list)  
Mr. Gruiner (didn't sign guest list)

Mr. Shaper (didn't sign guest list)  
Ms. Raye (didn't sign guest list)  
Mr. Reiner-Aloni (didn't sign guest list)  
Mr. Daviee (didn't sign guest list)

1. **Call to Order, Action on Absences and Pledge of Allegiance**  
Mr. Phinney called the meeting to order at 3:15 p.m. Mr. Wong led the Pledge of Allegiance.

3. **Design Control Board Reviews**

- A. **Parcel 95 – Marina West– DCB #07-013**  
Consideration of permanent signage for Lennar Urban

Mr. Phinney (Wong) moved to approve DCB #07-013 with the condition that the lighting be only until 11:00 pm. [Unanimous consent]

4. **New Business**

- A. **Parcel 76 – Marina Towers – DCB #07-011-B**  
Further consideration of exterior renovations.

Ms. Miyamoto gave a brief overview of the project.

**Public Comments**

Mr. Katela spoke about the original proposal plus alternate design and asked the Board for approval to commence constructions as soon as possible.

Mr. Ahbe spoke about the existing Mexican Fan Palm trees along Admiralty Way Lincoln Boulevard, and indicated that the number of olive trees had increased.

Mr. Reiner-Aloni had concerns about modifying the wooden bar screening with a new aluminum bar with a more natural black color alternative.

Mr. Daviee spoke about the proposed monument signage and explained that the project presented an alternate design. The applicant said the original is preferred for this project.

Ms. Eartman said they had considered the up-lighting and revised the project to have lighted Palm trees only. All lights will be turned on at dusk and off at 11:00 p.m.

**Public Comments**

No Public Comment

Mr. Phinney closed public comments

Board Comments

Mr. Phinney asked the Board members if they had any concerns.

Mr. Abelar and Mr. Wong replied no.

Mr. Phinney opened the project for further discussion.

Mr. Wong stated that the questions from the last meeting were addressed and he believed the original proposal was well-designed.

Mr. Abelar asked about lighting hours.

Ms. Eartman said the walking paths lighting would remain on 24/7 - enough time to provide security but only within the path of travel. Ms. Eartman reminded the Board that the ATM has to be well lighted and mounted with cameras, according to California Codes.

Mr. Phinney asked Ms. Eartman to elaborate on the lighting along Admiralty Way.

Ms. Eartman said the fixtures used affect the ground lighting only. She also stated the lights can be turned off at 11 p.m.

Mr. Wong asked for additional information on the proposed palm trees.

Mr. Ahbe explained the alternative design with olive trees but insisted the original design would have fewer olive trees with palms trees behind them.

Mr. Phinney asked Mr. Ahbe for lighting on the alternate landscape design.

Ms. Miyamoto mentioned the previous lighting option pertained to the Lincoln Boulevard elevation and not Admiralty Way as requested by the Board.

Mr. Phinney asked if they were looking at the right elevation.

Mr. Abhe said yes and that there were no olive trees proposed in the original presentation.

Mr. Phinney asked for additional data on lighting along Admiralty Way.

Ms. Eartman said their proposal included lights toward the existing palms and not along the parking garage.

Mr. Phinney asked about pedestrian lighting along Admiralty Way and if consideration was given to olive trees for this elevation.



Ms. Eartman said yes; the lighting was considered for the palm trees only, and olive trees were considered for this elevation.

Mr. Katela stated they preferred keeping the original design, in order to provide one consistent overall plan for the entire parcel. He said that there are three independent buildings along Admiralty Way and this project provided an office campus feel.

Mr. Phinney asked the Board if there were any additional comments and for a motion to be called; either to accept the alternates or revert back to the original concept in its entirety.

Mr. Wong (Abelar) moved to approve the original proposal for DCB Item 07-011.

Mr. Phinney said he wanted to clarify a couple of things concerning the original proposal:

1. To light every other palm tree, rather than each one; and
2. Accept the monument signs as originally proposed. (Any additional monument signs will be questioned.)

Mr. Phinney then asked for an explanation for the two pole lights and illumination quality.

Ms. Eartman said they could use both options discussed by the Board.

Mr. Phinney asked the applicant if they had a preference in the lighting.

Ms. Eartman said they preferred the original.

Mr. Phinney concurred.

Mr. Abelar questioned the design of the lighting and asked if both designs had the same lighting range.

Ms. Eartman asked if he was referring to the original design.

Mr. Abelar said yes.

Ms. Eartman said there was not an outside shield on either.

Mr. Phinney asked if the lighting pattern was the same.

Ms. Eartman said yes.

Mr. Katela said the only alternate modification they would like to have approved is to have the original stainless steel screening changed to brushed aluminum.

Mr. Phinney said they would like to amend the previous motion.

Mr. Wong stated there were two conditions for the original proposal. He then said there were two additional conditions requested by the applicant; one related to the sign material and the other to visual screening changes.

Mr. Wong asked Mr. Phinney to articulate the changes.

Mr. Phinney stated the motion is to accept the original plan. He said they were amending the motion to accept the original plan and reduce the up-lighting to every other palm tree.

Mr. Wong agreed.

Mr. Phinney said he would like to amend the motion by accepting individual monument signage from the original plan with a brushed aluminum finish. They are also approving the original parking area light pole design.

Mr. Katela said the original plan included wood screening.

Mr. Phinney agreed and said the Board asked to have it changed to stainless steel at the last meeting.

Mr. Wong said they will move for the original design with amendment.

Mr. Phinney accepted the changes.

Mr. Phinney said an additional amendment in favor of aluminum clear finish screen was required and asked the Board for more accuracy.

Mr. Phinney said the first motion would be amended and the new motion would accept the original plans for the landscaping and up-lighting on every other palm tree. He said they are approving the signage for individual monuments by using brush aluminum, accepting the original light pole design in the parking lot area and accepting the clear aluminum finish screen.

The Board agreed.

Mr. Wong added that there was no change of hours of illumination.

Mr. Katela said no. Indicating they were asked to return with the hours of operation upon the next meeting.

Mr. Wong asked Mr. Phinney to amend the hours of illumination to be no later than 11pm, except for the ATM safety lighting for pedestrian path and parking lot lights.

**Mr. Wong (Phinney) moved to approve DCB Item #07-011-B (original submittal design) with the following conditions:**

- 1. Applicant to limit up-lighting to every other palm trees; and**
- 2. Applicant to use clear aluminum finish on parking building entry screen.**

**B. Parcel 50 – Waterside Marina del Rey – DCB #07-014-B**

Further consideration of exterior renovations for The Counter

Ms. Miyamoto gave a brief overview of the project.

Public Comments

Ms. Raye discussed some of the color changes to the signage and exterior doors. Mr. or Mrs. stated the roll-up windows were originally approved in August.

Mr. Shaper said the crème and white trim on the building would remain, however the following items below were discussed:

1. The existing terra-cotta color will be replaced with a Lakeside blue color.
2. The storefronts will be replaced with a new front glazing and set of double doors.
3. The rear elevation will contain a door for emergency exit and stockroom entry.
4. The double doors on the rear will be replaced with two single doors.
5. The awnings on the back will remain but signage is to be added to three elevations.
6. Four signs total are proposed.
7. The east elevation will contain a blade sign and the primary signage with The Counter logo.

Mr. Abelar asked if access doors existed on both sides.

Mr. Barnett replied yes.

Mr. Shaper said the tenant space is located at the end of building, and that parking wraps around the building with canopies and entries on the west side.

Public Comments

No public comments.

Board Comments

Mr. Phinney asked the Board for any additional questions or concerns.

Mr. Abelar asked for the sign colors.

Mr. Shaper said there were four different colors on the signage; two variables of blue, one brown and one rusty aluminum.

Mr. Abelar asked how many signs there would be.

Ms. Raye said four total.

Mr. Abelar asked what the limit was regarding the number of signs a tenant could have.

Mr. Shaper said the number of signs proposed met Regional Planning codes, including the blade sign.

Mr. Abelar asked where the second sign would be placed.

Mr. Shaper said it would be placed at the rear of the building, facing Admiralty Way, and that the remaining two elevations would each have one sign.

Mr. Abelar asked staff if any other projecting blade sign existed in the Marina.

Ms. Odish said the blade sign was the only one, and due to the location of The Counter, at the end of the row, additional signage was requested.

Mr. Abelar stated it was true for the tenant on the opposite end and added that someone standing in front of The Counter, while looking north, would encounter the same problem; the tenant at the other end would not be visible.

Mr. Phinney asked if the building was blue or a new blue.

Ms. Odish said it is a new blue.

Mr. Phinney asked if the color was already approved.

Ms. Odish answered that to her knowledge, the color was a new blue.

Mr. Phinney said that it was his understanding that the proposal is advocating a blue and white as the trim and the ground molding. He also stated that currently, the building is painted in a yellowish color.

Ms. Odish replied yes.

Mr. Phinney stated the current proposal is now more like the other blue buildings.

Ms. Odish said it will match the rest of the buildings with a similar color.

Mr. Abelar interjected and said he was trying to understand the prints.

Mr. Phinney asked the applicant to clearly state for the record what happened to the roll-up windows. He stated that to his knowledge, there was an outside dining component that was no longer proposed.

Ms. Odish stated that they had difficulties with the design of the dining area and ADA access and, consequently, decided to remove the patio option.

Mr. Phinney asked the Board for a motion.

Mr. Abelar questioned the fourth sign and the two on the side of the building. He stated that he recalled having dealt with number of signs rather than size as an issue according to the regulations.

Mr. Phinney responded that a prior clothing tenant had two awning signs but only one entry. He said that particular tenant was allowed to have two signs, one directional and one façade sign, due to the location of the business' entry. He also asked if this issue sounded familiar.

Ms. Odish replied yes. She said that sub-lessee was no longer a tenant, but they had signs along Admiralty and Mindanao.

Mr. Phinney said the sign was painted and the primary sign was ideal.

Mr. Abelar said his concern dealt with the number of signs reflecting along Washington?

Ms. Odish stated that when two signs exist on a single façade, then there are code issues. She added that because the two signs proposed are different, it is acceptable and allowed by the code. She stated that it was important for them to have visibility from the primary entry and therefore a blade sign was ideal.

Mr. Abelar stated they were referring to the number of signs and not the size of each sign, which is defined by regulations.

Mr. Phinney asked Mr. Abelar if his concern was the proposed blade sign rather than a flat sign, as it is visible from the east elevation.

Mr. Abelar replied no.

Mr. Gruiner explained the importance of the blade sign due to the size of the existing Pier One retail space, where The Counter will be located. He stated that the area allocated to The Counter is scaled back and, therefore, a clear view of the restaurant will not be available from the north without identification with a blade sign or projection sign.

Mr. Abelar asked for a larger plan layout.

Mr. Tripp interjected and made reference regarding the Regional Planning sign regulation for ground floor businesses with entrances which are not on the street frontage. He stated that retailers are allowed to have one business sign for their business, but asked also to note that this building is fronted by streets on all three sides.

Mr. Abelar said the building was actually surrounded by parking lots.

Mr. Wong stated that there is only one side and one street.

Mr. Abelar again asked for a larger layout.

Mr. Phinney asked the Board to use of the microphone. He stated that their opinions had to be made public and addressed to the architect, tenant and owner according to the Brown Act.

Mr. Curran stated that he is ready to go forward with the project. He said the blade sign is a necessity for the business operation and that all other signs will be in conformance with existing signs.

Mr. Phinney said he cannot speak for all members of the Board but he understands the applicant's situation. He expressed his concerns regarding the blade sign, adding that future tenants will want to keep the blade sign which the Board will not accept. He advised the owner that, should this tenant be replaced, the blade sign will have to be removed.

Mr. Curran acknowledged this.

Mr. Phinney stated the applicant's proposal was reasonable and advised the Board that once the project was approved it could not be undone. He asked if he was clear.

Mr. Wong and Mr. Abelar replied yes.

Mr. Abelar said he does not object to the second sign; however, the Board has allowed only one sign in the past and asked staff to review this matter.

Ms. Odish responded and referred to existing conditions along Lincoln, which reflect the rear side of the center. She said tenants are now proposing tenant identification signs along Lincoln, which is the rear and service access for businesses.

Mr. Abelar clarified that he did not object to the sign on either side. He questioned the fact that two signs are proposed on one side.

Mr. Phinney asked Mr. Abelar if he accepted the argument regarding the retail having a stepped façade with considerable relief between one step and the next. He also suggested that the Board may consider these to be two independent façades.

Mr. Abelar said he was only trying to be consistent with prior decisions by the Board in the past.

Mr. Phinney referred to a prior sign approved as a mermaid blade sign over three years ago. He asked if anyone remembered this.

The Board replied no.

Mr. Phinney stated the blade sign was actually mermaid-shaped and similar to The Counter's sign.

Ms. Odish clarified that Pier One had been divided into four spaces, two of which had already been leased. She said that all new sublessees at this location will propose front and rear signage. She added that due to the design of the stepped façade, the canopy sign will not have much of a visual impact.

Mr. Abelar asked how far the set back was?

Mr. Abelar stated no more than 10 feet.

Mr. Phinney asked the architect to show where the stepped façade was located.

Mr. Phinney asked for a motion.

Mr. Abelar asked to review the sign colors first.

Mr. Wong said the sign colors were okay.

**Mr. Abelar (Phinney) moved to approve agenda DCB #07-014-B as submitted.  
[Unanimous consent]**

**C. Parcel 8 – Bay Club Apartments & Marina - DCB #07-016-B**  
Further consideration of repainting

Ms. Miyamoto gave a brief overview of the project and stated that, as suggested by the Board, the applicant now proposed to paint each bay the same color.

**Public Comments**

Mr. Preciado said he believed the painting design to be a good concept.

Public Comment closed.

**Board Comments**

Mr. Abelar stated the Board covered the paint colors during the last meeting.

**Mr. Wong (Phinney) moved to approve DCB #07-016-B as submitted.  
[Unanimous consent]**

**D. Parcel 102 – Archstone Marina del Rey – DCB #07-009-B**

Further consideration of storage area renovations.

Ms. Miyamoto gave a brief overview of the project.

Public Comment

Mr. Udwin introduced Ms. Liggett

Mr. Udwin discussed the project modifications and referred to the shaded designs to describe the added storage square footage and new landscaped area. Mr. Udwin said that he met with Russ Fricano from Regional Planning, Charlotte Miyamoto and Jean Kamria, his Civil Engineer, to clarify the easements in the property. He added that the drainage easement had been vacated and that an 8" drain pipe was added to the proposed planters to pick up all nuisance water.

Mr. Phinney commended Mr. Udwin.

Mr. Udwin clarified the proposed building color, as requested during the August meeting, and said the color chip was included in the submittal.

Ms. Liggett discussed the sustainable landscape proposed and said that it would improve the visual quality of the façade.

Public Comment

Mr. Gottlieb said he provided a personal statement about the project to Ms. Cloke regarding the project, but it was not included in the minutes.

Mr. Phinney said he did not see the statement.

Mr. Gottlieb continued to read his statement for the record and provided a copy to Mr. Phinney.

Mr. Phinney closed the public testimony.

Board Comments

Mr. Phinney said that the applicant was essentially closing an area previously used as carports and that no roof work was proposed, leaving the building footprint as is. He asked staff to share any concerns on proximity to right-of-way and the meeting with the applicant's Civil Engineer.



DRAFT

Ms. Miyamoto said that she met with Al Udwin and the Civil Engineer. She explained the proposed enclosure would not be encroaching into the right-of-way, and that Dell Avenue was once a public easement and was vacated by the City of Los Angeles. She said the County now owns Dell Avenue without any encumbrances of easement. Ms. Miyamoto also asked Mr. Phinney if he was aware of any zoning ordinances that might affect the project.

Mr. Phinney explained that the applicant was not encroaching into the right-of-way as shown on the plans and that the building was not built in conformance to the original plans. He said this proposal had no issues and asked the Board to share their concerns.

Mr. Abelar said the proposed project basically consisted of a wall enclosure and new planters. He asked if the planters were beneath the overhang.

Ms. Leggitt said yes.

Mr. Phinney asked for further questions.

Mr. Abelar asked what setbacks applied to the building.

Ms. Miyamoto said she did not know.

Mr. Tripp stated there were no specific setbacks for planters below 42" inches from grade. He said that the proposed planters are at ground level.

Mr. Abelar said referred back to his question from the last meeting stating he understood Mr. Tripp's comments.

Mr. Phinney asked for additional Board comments.

Mr. Wong and Mr. Abelar had none.

Mr. Phinney stated he was ready for a motion.

**Mr. Wong (Abelar) moved to approve DCB item #07-009-B as submitted [Unanimous consent].**

The following agenda items were not discussed due to time constraints:  
5B, 5C, 5D, 5E, 6, and 7.

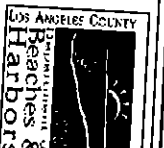
Meeting adjourned at 4:50pm

Respectfully Submitted,

*Teresa Young*  
Secretary for the Design Control Board



# Locations of March 12, 2008 SCHC Items



Item 6a:  
P-33  
The Organic  
Panificio

Item 4b:  
P-21  
Holiday Harbor

BASIN E

A

B

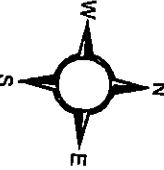
C

D

F

G

H



**OLD BUSINESS:**

4b: P-21; Holiday Harbor

**REPORTS:**

The Organic Panificio